











JOURNAL  
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SENATE  
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# STATE OF NEW HAMPSHIRE



## CONVENING DAY

*January 8, 1992*

The Senate met at 1:00 p.m.

A quorum was present.

The prayer was offered by the Rev. Dawn Berry, guest Chaplain.

*Living God, you are the beginning of our journeys, our guide and our destination. Your sovereignty extends beyond our personal piety to include public policy. By your word you called the world into being, setting humanity as caretakers of your beloved creation. As this legislative session begins, bless the Senators now gathered with the courage of your spirit. In moments when their task seems unending, renew their strength and patience. May their words and decisions serve your creative purposes. Remind them that debates about issues are translated into the quality of human life where success is not measured by the saving of money, but by the saving of life. Hear our prayer, O God.*

*Amen.*

Senator Delahunty led the pledge of allegiance.

### INTRODUCTION OF GUESTS

New Staff:

Paul J. Alfano  
Rachel Berger

Legal Counsel  
Committee secretary to Environmental  
and Public Affairs.

Rosalie Brooks Patch

Committee secretary to Internal Affairs  
and Interstate and Public Institutions,  
Health and Human Services.

Thersea Pennock

Committee secretary to Economic De-  
velopment and Wildlife and Recreation  
Departments.

Denice Pickard	Committee secretary to Education and Transportation.
Linda Pinet	Committee secretary to Ways and Means.
Jeanne Geiman	Committee secretary to Banks and Judiciary committee.
Carol Pletcher	Committee secretary supervisor and secretary to Executive Departments, Insurance, and Rules.
Henry Wilson	Senate recorder.
Woody Ellen Alosa	Correspondence secretary.
Katherine Lewis	Correspondence secretary.
Curtis Barry	Legislative Aide.
Jennifer Jenkins	Legislative Aide.
Jennifer White	Legislative Aide.
Senate Research Interns	St. Anselm's College: Erin Bode, Pamela Downey, Kelly Mate, Skye Steele.
Student Interns	UNH:
Jeff Gaumont	Senator Cohen.
Kristen Kelly	Senator Fraser.
Linda Lund	Senator Bass.
Edward MacLean	Senator Russman.
Jim Manning	Senator W. King.
John Persch	Senator Nelson.
Elizabeth Pollard	Senator Shaheen.
Mark Purple	Senator Colantuono.
Jodi Raposa	Senator Pressly.
Brenda Riddell	Senator McLane.
Marla King	Senator Hollingworth.

Recess.

Out of recess.

### HOUSE MESSAGE

The House of Representatives is ready to meet in Joint Convention for the purpose of hearing the State of the State Address by the Governor, His Excellency, Judd Gregg.

Recess.

Out of recess.

### INTRODUCTION OF SENATE BILLS

Senator Delahunty offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, Senate Bills numbered 300-474 and SJR 1, SCR 10-12, CACR 29-32, shall be by this resolution read a first and second time

Adopted.

SB 300	3901L	92-2319
reapportioning the New Hampshire congressional districts. (Fraser of Dist. 4; Disnard of Dist. 8; Shaheen of Dist. 21; Currier of Dist. 7; Roberge of Dist. 9; J. King of Dist. 18 - To Internal Affairs)		
SB 301	4382L	92-2320
to reapportion the state senate districts. (Fraser of Dist. 4; Disnard of Dist. 8; J. King of Dist. 18; Shaheen of Dist. 21; Currier of Dist. 7; Roberge of Dist. 9 - To Internal Affairs)		
SB 302-FN-A	4260L	92-2655
establishing a nonprofit corporation to guide the economic development of New Hampshire and making an appropriation therefor. (Dupont of Dist. 6 - To Economic Development)		
SB 303	4223L	92-2649
establishing a committee to study the various options available to fund and deliver medical benefits for state employees. (Dupont of Dist. 6; Currier of Dist. 7 - To Insurance)		
SB 304-FN-A	4296L	92-2626
making an appropriation for the purposes of bio-tech research. (Dupont of Dist. 6 - To Economic Development)		
SB 305-FN	4243L	92-2656
relative to a coordinator of federal funds. (Dupont of Dist. 6; W. King of Dist. 2 - To Economic Development)		
SB 306-FN-A	3558L	92-2003
allowing bonus payments in recognition of service during the Persian Gulf War and making an appropriation therefor. (Blaisdell of Dist. 10; Benton of Rockingham Dist. 5 - To Finance)		
SB 307-FN	3559L	92-2119
authorizing disclosure of certain information contained in the records of the department of revenue administration to the office of reimbursements, division of mental health and developmental services. (Fraser of Dist. 4 - To Judiciary)		
SB 308	4214L & 4288L	92-2646
revising the business corporation act. (W. King of Dist. 2; Shaheen of Dist. 21; Fraser of Dist. 4; Currier of Dist. 7; Jasper of Hillsborough Dist. 19; Jacobson of Merrimack Dist. 2; Mercer of Hillsborough Dist. 23 - To Judiciary)		

- SB 309 4231L 92-2663  
prohibiting the distribution of condoms to persons 21 years of age or younger on state property or in schools. (Humphrey of Dist. 17 - To Public Institutions, Health and Human Services)
- SB 310 4257L 92-2648  
establishing a chancery court within the superior court which will have jurisdiction over corporate law issues. (W. King of Dist. 2; Fraser of Dist. 4; Cohen of Dist. 24; Currier of Dist. 7; Jasper of Hillsborough Dist. 19; Mercer of Hillsborough Dist. 23; Jacobson of Merrimack Dist. 2 - To Judiciary)
- SB 311 4150L 92-2448  
exempting certified fire investigators from licensure under the detective agencies and securities services act and changing the date for renewal or reinstatement of private detective licenses. (Podles of Dist. 16 - To Executive Departments)
- SB 312-FN 4229L 92-2683  
relative to mandatory testing for health care providers and certain patients for communicable diseases. (Humphrey of Dist. 17 - To Public Institutions, Health and Human Services)
- SB 313 4281L 92-2478  
relative to gender balance on boards and commissions. (Pressly of Dist. 12; Clemons of Hillsborough Dist. 25 - To Executive Departments)
- SB 314-FN-A-LOCAL 3880L 92-2454  
making a supplemental appropriation for the board of tax and land appeals and increasing filing fees for appeals to the board. (Hough of Dist. 5; Schotanus of Sullivan Dist. 1 - To Executive Departments)
- SB 315-FN 4307L 92-2450  
prohibiting judges from waiving repayment of attorneys' fees by defendants for whom public defenders, contract attorneys, or assigned counsel are appointed. (Currier of Dist. 7 - To Judiciary)
- SB 316 4224L 92-2297  
establishing a committee to study cable television rates and the possibility of introducing competition into the marketplace in order to lower rates. (Colantuono of Dist. 14; Heath of Dist. 3; D. Wheeler of Hillsborough Dist. 10 - To Public Affairs)
- SB 317 4239L 92-2659  
relative to siting manufactured housing in municipalities. (Colantuono of Dist. 14; Heath of Dist. 3; Pressly of Dist. 12; J. King of Dist. 18; Salatiello of Belknap Dist. 3; Peyron of Sullivan Dist. 2; Soucy of Hillsborough Dist. 39 - To Public Affairs)



- SB 318 4167L 92-2653  
relative to a fire protection area within the town of Amherst. (Roberge of Dist. 9; Tarpley-Bamberger of Hillsborough Dist. 9; Holden of Hillsborough Dist. 9; Lown of Hillsborough Dist. 9; Cowenhoven of Hillsborough Dist. 9 - To Public Affairs)
- SB 319 4158L 92-2621  
separating the AFDC standard of need from the AFDC payment standard. (McLane of Dist. 15; Julie Brown of Strafford Dist. 11 - To Public Institutions, Health and Human Services)
- SB 320 4228L 92-2391  
relative to political advertising by candidates. (Bass of Dist. 11 - To Public Affairs)
- SB 321 3996L 92-2330  
repealing an exemption for town clerks relative to voter registration. (Cohen of Dist. 24; Bass of Dist. 11; Disnard of Dist. 8; McLane of Dist. 15; Roberge of Dist. 9; Durham of Hillsborough Dist. 18; P. White of Grafton Dist. 6; Shackett of Grafton Dist. 10; Hashem of Strafford Dist. 3; Baldizar of Hillsborough Dist. 22 - To Public Affairs)
- SB 322 4219L 92-2640  
limiting the advertising expenses of public utilities which may be included in the calculation of rates and establishing a long range energy policy committee. (Shaheen of Dist. 21; W. King of Dist. 2 - To Economic Development)
- SB 323 3759L 92-2300  
establishing a committee to study the issue of physician self-referrals. (Colantuono of Dist. 14; Heath of Dist. 3; Copenhaver of Grafton Dist. 12 - To Public Institutions, Health and Human Services)
- SB 324 4308L 92-2298  
establishing a commission on the family. (Colantuono of Dist. 14; Heath of Dist. 3; D. Wheeler of Hillsborough Dist. 10 - To Public Institutions, Health and Human Services)
- SB 325 4352L 92-2267  
encouraging water companies to work with municipal customers to develop water conservation measures prior to the imposition of rate increases. (Cohen of Dist. 24; W. King of Dist. 2; Hollingworth of Dist. 23 - To Environment)
- SB 326-FN 4227L 92-2675  
relative to the borrowing authority for the Lamprey solid waste district. (Shaheen of Dist. 21; Disnard of Dist. 8; Dupont of Dist. 6; Wall of Strafford Dist. 4; Frechette of Strafford Dist. 8; Woods of

Rockingham Dist. 19; Jankowski of Strafford Dist. 5; A. Merrill of Strafford Dist. 4 - To Environment)

SB 327 4292L 92-2668

establishing a committee to study the effects of substance abuse on health care costs of the state. (Hollingworth of Dist. 23; Disnard of Dist. 8; Klemarczyk of Rockingham Dist. 13; Spencer of Strafford Dist. 4; Hashem of Strafford Dist. 3 - To Public Institutions, Health and Human Services)

SB 328-FN 4357L 92-2647

restoring funds to the university system. (W. King of Dist. 2; Cohen of Dist. 24 - To Finance)

SB 329 3920L 92-2476

authorizing the New Hampshire housing finance authority to assist tenants when a manufactured housing park is undergoing condominium conversion. (Pressly of Dist. 12; Bass of Dist. 11; Coffey of Rockingham Dist. 18; Clemons of Hillsborough Dist. 25; Soldati of Merrimack Dist. 19 - To Public Affairs)

SB 330 4295L 92-2264

changing the bureau of marine services to the division of marine services, department of resources and economic development. (Cohen of Dist. 24; Hollingworth of Dist. 23; Heath of Dist. 3; Vaughn of Rockingham Dist. 27; MacDonald of Rockingham Dist. 28 - To Executive Departments)

SB 331 3579L 92-2070

relative to gender equity in athletics. (Hollingworth of Dist. 23; Schotanus of Sullivan Dist. 1; Hurst of Rockingham Dist. 17; McGovern of Rockingham Dist. 27; Gilbreth of Merrimack Dist. 12 - To Public Affairs)

SB 332 4300L 92-2681

authorizing a municipality to issue bonds to pay the costs of the cleanup of superfund hazardous waste sites. (Shaheen of Dist. 21; Colantuono of Dist. 14; Dupont of Dist. 6; Cohen of Dist. 24; Bass of Dist. 11; A. Torr of Strafford Dist. 6; Corte of Strafford Dist. 6; W. McCann of Strafford Dist. 7; Wall of Strafford Dist. 4; Gilmore of Strafford Dist. 7 - To Environment)

SB 333 41238L 92-2032

relative to a Piscataqua River basin council. (Cohen of Dist. 24; W. King of Dist. 2; Hollingworth of Dist. 23; Shaheen of Dist. 21; Gilmore of Strafford Dist. 7 - To Interstate Cooperation)

- SB 334-FN-A 3740L 92-2502  
authorizing the division of public health services to carry out a rabies surveillance to identify and gauge the threat to the public's health and making an appropriation therefor. (Nelson of Dist. 13; Shaheen of Dist. 21; Copenhaver of Grafton Dist. 12 - To Public Institutions, Health and Human Services)
- SB 335-FN 3876L 92-2286  
authorizing the board of marital mediator certification to establish and collect certification fees, establish a budget and certify certain applicants and continually appropriating a fund. (Nelson of Dist. 13; Jacobson of Merrimack Dist. 2 - To Executive Departments)
- SB 336 41293L 92-2284  
providing an exemption for the issuance of securities by certain established investment companies. (Fraser of Dist. 4 - To Banks)
- SB 337-FN 41258L 92-2601  
increasing witness fees for law enforcement officers. (J. King of Dist. 18; Baroody of Hillsborough Dist. 39 - To Judiciary)
- SB 338 41309L 92-2253  
establishing the crime of official abuse. (Roberge of Dist. 9 - To Judiciary)
- SB 339 41220L 92-2658  
establishing a committee to study the impact of New Hampshire's product liability laws on manufacturers in New Hampshire. (Dupont of Dist. 6 - To Judiciary)
- SB 340-FN 41248L 92-2652  
clarifying the definition of a school district. (Oleson of Dist. 1 - To Education)
- SB 341 41364L 92-2654  
relative to local industrial development authorities. (Oleson of Dist. 1; W. King of Dist. 2; Dupont of Dist. 6 - To Economic Development)
- SB 342 41310L 92-2252  
relative to resisting arrest or detention. (Roberge of Dist. 9 - To Judiciary)
- SB 343 41194L 92-2301  
relative to reconsideration of town meeting and school district meeting votes. (Colantuono of Dist. 14; Roberge of Dist. 9 - To Public Affairs)

- SB 344-FN 3934L 92-2643  
relative to filing fees for multiple tax abatement applications filed with the board of tax and land appeals. (W. King of Dist. 2 - To Ways and Means)
- SB 345-FN 3906L 92-2644  
requiring reimbursement of certain filing fees paid to the board of tax and land appeals. (W. King of Dist. 2 - To Ways and Means)
- SB 346 41303L 92-2679  
relative to certain restraining orders and requiring arrest for certain violations of such restraining orders. (Shaheen of Dist. 21; Hollingworth of Dist. 23; McLane of Dist. 15; Russman of Dist. 19; Lown of Hillsborough Dist. 19; Record of Hillsborough Dist. 23 - To Judiciary)
- SB 347-LOCAL 41347L 92-2678  
expanding the role of the Dover Industrial Development Authority. (Shaheen of Dist. 21; Corte of Strafford Dist. 6; W. McCann of Strafford Dist. 7; A. Torr of Strafford Dist. 6; Gilmore of Strafford Dist. 7 - To Economic Development)
- SB 348 41302L 92-2307  
establishing a committee to study the present and future needs of the correctional system. (Dupont of Dist. 6 - To Executive Departments)
- SB 349-FN-A 41218L 92-2623  
making a supplemental appropriation to the joint promotional advertising program in the department of resources and economic development. (Dupont of Dist. 6 - To Finance)
- SB 350 41306L 92-2617  
expanding the membership of the task force on mental health and criminal justice and continuing the study of the interactions between the mental health and criminal justice systems. (Russman of Dist. 19; Record of Hillsborough Dist. 23 - To Judiciary)
- SB 351 41329L 92-2629  
prohibiting the sale of certain products containing phosphorus. (Russman of Dist. 19; Conroy of Rockingham Dist. 7 - To Environment)
- SB 352 41330L 92-2630  
relative to physical qualifications for police officers. (Russman of Dist. 19 - To Public Affairs)
- SB 353 41181L 92-2635  
relative to copying recordings. (Russman of Dist. 19 - To Judiciary)

- SB 354 41252L 92-2637  
to create a government council on economic transition. (W. King of Dist. 2; Cohen of Dist. 24 - To Economic Development)
- SB 355 41265L 92-2676  
requiring that deposits for the purchase of manufactured housing be held in escrow accounts. (Shaheen of Dist. 21; Colantuono of Dist. 14; J. King of Dist. 18; Pressly of Dist. 12; L. Apple of Merrimack Dist. 9; Baroody of Hillsborough Dist. 39; Hambrick of Strafford Dist. 4; Soldati of Merrimack Dist. 19 - To Public Affairs)
- SB 356 41363L 92-2674  
relative to quality assurance records in nursing homes and health maintenance organizations. (McLane of Dist. 15; Fraser of Dist. 4 - To Public Institutions, Health and Human Services)
- SB 357-FN 3689L 92-2288  
prohibiting licensure by any state agency or board where an outstanding court default or bench warrant has been issued and making license application fees non-refundable. (Colantuono of Dist. 14; Heath of Dist. 3 - To Executive Departments)
- SB 358 41294L 92-2244  
relative to the industrial development authority study committee. (W. King of Dist. 2 - To Economic Development)
- SB 359 3995L 92-2606  
relative to expending moneys by the OHRV bureau for trail maintenance expenses. (Currier of Dist. 7; Peyron of Sullivan Dist. 2; Tufts of Rockingham Dist. 13 - To Wildlife and Recreation)
- SB 360 3752L 92-2607  
establishing a committee to study head injury cases in New Hampshire. (Currier of Dist. 7; Cohen of Dist. 24; Podles of Dist. 16 - To Public Institutions, Health and Human Services)
- SB 361 41153L 92-2608  
relative to the impact fee laws. (Currier of Dist. 7 - To Executive Departments)
- SB 362 3935L 92-2591  
redefining proprietary medicines to include nonprescription medicines and exempting non-pharmacy retail stores and outlets from classification as pharmacies for the purpose of RSA 318. (Hollingworth of Dist. 23 - To Executive Departments)
- SB 363 41168L 92-2558  
relative to health insurance coverage of autologous bone marrow transplants. (McLane of Dist. 15; Cohen of Dist. 24; Shaheen of Dist. 21 - To Insurance)

- SB 364-FN-A 41361L 92-2550  
establishing an inventor assistance program and continually appropriating a revolving fund. (W. King of Dist. 2 - To Economic Development)
- SB 365 41232L 92-2568  
prohibiting abortions based on sex selection. (Humphrey of Dist. 17 - To Judiciary)
- SB 366-FN 3953L 92-2592  
enabling the retirement system board of trustees to invest retirement system assets in participation with commercial entities licensed by the small business administration. (W. King of Dist. 2 - To Insurance)
- SB 367 41165L 92-2403  
authorizing the department of resources and economic development to sell the Nansen ski jump facility if no interest exists in the private sector to maintain and operate the facility. (Oleson of Dist. 1; Nelson of Dist. 13 - To Wildlife and Recreation)
- SB 368 41221L 92-2453  
changing statutory references to automobile graveyards, motor vehicle junkyards and junk vehicles to include automotive recycling yards or vehicles. (Podles of Dist. 16; Disnard of Dist. 8; G. Katsakiores of Rockingham Dist. 7; Krueger of Sullivan Dist. 6; Allison of Sullivan Dist. 7; Middleton of Sullivan Dist. 6; Lawrence of Hillsborough Dist. 20 - To Public Affairs)
- SB 369 41170L 92-2595  
enabling municipalities to grant property tax incentives to new and expanding businesses and industries in the community. (Oleson of Dist. 1; Nelson of Dist. 13; Pressly of Dist. 12 - To Economic Development)
- SB 370 41289L 92-2336  
relative to health insurance coverage for scalp hair prostheses. (Hollingworth of Dist. 23; Shaheen of Dist. 21 - To Insurance)
- SB 371 41199L 92-2023  
establishing a committee to study the feasibility of year-round schools. (Disnard of Dist. 8; Skinner of Rockingham Dist. 21 - To Education)
- SB 372 41159L 92-2627  
authorizing industrial development financing for the Manchester Airport. (Podles of Dist. 16; Blaisdell of Dist. 10; Dupont of Dist. 6; Nelson of Dist. 13; Colantuono of Dist. 14; W. Boucher of Rocking-

ham Dist. 23; Bourque of Hillsborough Dist. 35; LaMott of Grafton Dist. 5; O'Rourke of Hillsborough Dist. 35 - To Economic Development)

SB 373 41279L 92-2001

allowing the filing of the ULOR-C form for Rule 504 securities offerings in New Hampshire. (W. King of Dist. 2; Currier of Dist. 7; Fraser of Dist. 4; Jacobson of Merrimack Dist. 2 - To Banks)

SB 374 41173L 92-2517

requiring retail establishments to disclose the existence of certain wax or resin coatings by displaying the shipping label or a large sign. (J. King of Dist. 18; Shackett of Grafton Dist. 10 - To Public Institutions, Health and Human Services)

SB 375 41253L 92-2622

allowing the division of parks and recreation to give rewards for information leading to the recovery of stolen division property. (McLane of Dist. 15; Tufts of Rockingham Dist. 13 - To Wildlife and Recreation)

SB 376-FN-A 41261L 92-2447

relative to congregate services programs and making an appropriation therefor. (Podles of Dist. 16; Dupont of Dist. 6; Blaisdell of Dist. 10; Disnard of Dist. 8; Hough of Dist. 5; Bourque of Hillsborough Dist. 35; O'Rourke of Hillsborough Dist. 35; LaMott of Grafton Dist. 5; K. Foster of Cheshire Dist. 17 - To Finance)

SB 377-FN 3743L 92-2589

relative to penalties for mortgage brokers who fail to file annual reports. (Hollingworth of Dist. 23 - To Banks)

SB 378 41272L 92-2556

transferring duties under the uniform reciprocal enforcement of support act from county attorneys to the office of child support enforcement services. (McLane of Dist. 15 - To Judiciary)

SB 379-FN 41161L 92-2620

changing the eligible age for free use of recreation areas from 65 to 70 and extending this privilege to all qualifying individuals. (McLane of Dist. 15; Tufts of Rockingham Dist. 13 - To Wildlife and Recreation)

SB 380 41012L 92-2334

relative to membership on planning boards in towns with the town council form of government. (Hollingworth of Dist. 23; Caswell of Rockingham Dist. 12; Schanda of Rockingham Dist. 12 - To Public Affairs)

- SB 381 41169L 92-2220  
relative to interest on escrow accounts. (Fraser of Dist. 4 - To Banks)
- SB 382 41271L 92-2028  
establishing a study committee on the selection, nomination and confirmation of judicial appointees. (Nelson of Dist. 13 - To Judiciary)
- SB 383 41276L 92-2029  
requiring that information be compiled regarding persons convicted of child abuse. (Nelson of Dist. 13 - To Education)
- SB 384 41313L 92-2031  
relative to foreclosures and sale of mortgaged property. (J. King of Dist. 18; Baroody of Hillsborough Dist. 39; Emerton of Hillsborough Dist. 6 - To Banks)
- SB 385 41259L 92-2337  
to provide insurance coverage for court-ordered psychiatric and psychological services. (Hollingworth of Dist. 23; Podles of Dist. 16; Record of Hillsborough Dist. 23; Burling of Sullivan Dist. 1 - To Insurance)
- SB 386-FN 41349L 92-2398  
relative to the publications, specialty items and fund-raising revolving fund of the fish and game department and authorizing certain fund-raising by the department. (Heath of Dist. 3 - To Wildlife and Recreation)
- SB 387 41355L 92-2404  
authorizing legally constituted boards and commissions which are created for the purpose of state historic site restoration the option of retaining ownership of any historic site furnishings which they acquire with other than state funds. (Nelson of Dist. 13; Sallada of Hillsborough Dist. 4; Tufts of Rockingham Dist. 13 - To Executive Departments)
- SB 388-LOCAL 41246L 92-2426  
relative to preserving utility licenses on municipal and state discontinued highways. (Fraser of Dist. 4 - To Transportation)
- SB 389-FN 3503L 92-2010  
allowing for the surviving spouse of a POW veteran of war to maintain the POW plates privilege. (J. King of Dist. 18; Shaheen of Dist. 21; Baroody of Hillsborough Dist. 39; S. Packard of Rockingham Dist. 23; Emerton of Hillsborough Dist. 6 - To Transportation)
- SB 390 3562L 92-2019  
establishing a revenue estimating conference which shall estimate anticipated state revenues. (Disnard of Dist. 8; Delahunty of Dist. 22 - To Internal Affairs)



- SB 391 41312L 92-2191  
relative to the use of surplus campaign funds by candidates for state office. (J. King of Dist. 18; Shaheen of Dist. 21; Gilmore of Strafford Dist. 7; Baroody of Hillsborough Dist. 39; Emerton of Hillsborough Dist. 6 - To Public Affairs)
- SB 392 41287L 92-2231  
relative to guardians ad litem. (Podles of Dist. 16; Nelson of Dist. 13; Lozeau of Hillsborough Dist. 25 - To Judiciary)
- SB 393 41268L 92-2240  
creating a committee to study the feasibility of locating a college in Haverhill, New Hampshire. (W. King of Dist. 2; Teschner of Grafton Dist. 5; LaMott of Grafton Dist. 5 - To Education)
- SB 394 41380L 92-2034  
relative to the jurisdiction of the labor department over self-insured workers' compensation programs. (Disnard of Dist. 8; Dupont of Dist. 6; Shaheen of Dist. 21 - To Insurance)
- SB 395 3522L 92-2039  
relative to penalties for persons less than 21 years of age charged with transportation of liquor. (Heath of Dist. 3 - To Judiciary)
- SB 396-FN 3698L 92-2040  
relative to motor vehicles and defaults on court fines and taxes. (Heath of Dist. 3 - To Judiciary)
- SB 397 41278L 92-2135  
relative to long-term job supports for severely disabled persons. (Blaisdell of Dist. 10; Hough of Dist. 5; Skinner of Rockingham Dist. 21 - To Education)
- SB 398 41311L 92-2027  
permitting the sale of red deer and elk venison. (Disnard of Dist. 8; W. Boucher of Rockingham Dist. 23 - To Wildlife and Recreation)
- SB 399-FN-LOCAL 3742L 92-2590  
requiring rabies shots for cats. (Cohen of Dist. 24; Carrier of Dist. 7; Colantuono of Dist. 14; Roberge of Dist. 9; Theriault of Coos Dist. 8; Ziegler of Belknap Dist. 6 - To Wildlife and Recreation)
- SB 400-FN-A-LOCAL 41053L 92-2435  
requiring fees in addition to licensure fees for dogs which are not spayed or neutered and using the increase to fund a state animal population control program and continually appropriating the companion animal population control fund. (Roberge of Dist. 9; Shaheen of Dist. 21; Janas of Hillsborough Dist. 39; Record of Hillsborough Dist. 23; Ziegler of Belknap Dist. 6; A. Merrill of Strafford Dist. 4 - To Wildlife and Recreation)

- SB 401 3904L 92-2585  
 exempting chiropractors from jury service. (Disnard of Dist. 8; Colantuono of Dist. 14; W. McCain of Rockingham Dist. 11 - To Judiciary)
- SB 402 41381L 92-2444  
 allowing mutual insurers to convert into stock insurance companies. (Dupont of Dist. 6; Fraser of Dist. 4; Delahunty of Dist. 22 - To Insurance)
- SB 403-LOCAL 3764L 92-2452  
 requiring that dogs and cats placed by shelters and pounds be spayed or neutered. (Shaheen of Dist. 21; Roberge of Dist. 9 - To Wildlife and Recreation)
- SB 404-FN 3992L 92-2586  
 relative to chiropractic practitioners and privileged communications. (Disnard of Dist. 8; Colantuono of Dist. 14; W. McCain of Rockingham Dist. 11 - To Judiciary)
- SB 405-FN 41226L 92-2154  
 relative to driver attitude training for repeat and habitual offenders. (Roberge of Dist. 9 - To Transportation)
- SB 406 41344L 92-2422  
 relative to penalties for second DWI offenses. (Roberge of Dist. 9; Russman of Dist. 19 - To Judiciary)
- SB 407-FN 41037L 92-2396  
 relative to the acceptance of credit cards for motor vehicle related offenses by clerks of court and bail commissioners. (Bass of Dist. 11 - To Transportation)
- SB 408 41305L 92-2477  
 prohibiting entities from being sealers of their own weights and measures devices. (Pressly of Dist. 12; J. King of Dist. 18 - To Public Affairs)
- SB 409-FN 41314L 92-2537  
 relative to retail store inspections by weights and measures inspectors and license fees. (Hollingworth of Dist. 23; Heath of Dist. 3; W. McCain of Rockingham Dist. 11 - To Public Affairs)
- SB 410 41350L 92-2409  
 relative to AIDS. (Fraser of Dist. 4; Dupont of Dist. 6; Copenhaver of Grafton Dist. 12; Ziegra of Belknap Dist. 6; R. Foster of Carroll Dist. 4; Krueger of Sullivan Dist. 6; K. Foster of Cheshire Dist. 17 - To Public Institutions, Health and Human Services)

- SB 411-FN 41299L 92-2142  
relative to special education catastrophic aid. (Hough of Dist. 5; Guest of Grafton Dist. 12; Larson of Grafton Dist. 9 - To Education)
- SB 412-FN-LOCAL 41342L 92-2248  
relative to signage by nonprofit organizations in zoned commercial or industrial areas. (W. King of Dist. 2 - To Transportation)
- SB 413-FN 41341L 92-2249  
allowing nonprofit organizations to use informational signs on certain highways. (W. King of Dist. 2 - To Transportation)
- SB 414-FN 41297L 92-2270  
authorizing a pilot program in one county for investigative services for attorneys providing counsel to indigent defendants. (Cohen of Dist. 24 - To Judiciary)
- SB 415-FN-A 41324L 92-2241  
establishing an economic development matching grants program. (W. King of Dist. 2; Cohen of Dist. 24 - To Economic Development)
- SB 416 41359L 92-2400  
relative to reporting contributions for testimonials. (Heath of Dist. 3 - To Public Affairs)
- SB 417-FN 41236L 92-2401  
relative to underground storage tanks. (Heath of Dist. 3 - To Environment)
- SB 418 41267L 92-2441  
changing the title of juvenile services officers to juvenile probation-parole officers. (J. King of Dist. 18; Baroody of Hillsborough Dist. 39 - To Executive Departments)
- SB 419-FN 41338L 92-2565  
relative to a parental choice in education program. (Humphrey of Dist. 17 - To Education)
- SB 420-FN 41346L 92-2600  
relative to interviewing children under the provisions of the Child Protection Act. (Colantuono of Dist. 14 - To Judiciary)
- SB 421-FN 41175L 92-2628  
relative to fireworks. (Currier of Dist. 7; Felch of Rockingham Dist. 14; Chasse of Hillsborough Dist. 27 - To Executive Departments)
- SB 422-FN 41235L 92-2651  
requiring the division of motor vehicles to make notification of license revocation or suspension by certified mail. (Roberge of Dist. 9 - To Transportation)

- SB 423-FN 41298L 92-2641  
providing incentives for banks operating in New Hampshire to invest in New Hampshire communities. (W. King of Dist. 2; Cohen of Dist. 24 - To Banks)
- SB 424-FN 41290L 92-2665  
to prohibit the state from paying dues or other membership expenses for state employees. (Humphrey of Dist. 17 - To Internal Affairs)
- SB 425-FN-LOCAL 41356L 92-2682  
relative to state and municipal cost-sharing for state parks. (Shaheen of Dist. 21; Hollingworth of Dist. 23; Disnard of Dist. 8 - To Wildlife and Recreation)
- SB 426-FN 41345L 92-2324  
establishing a task force to develop a strategy to train police and prosecutors to successfully prevent, investigate and prosecute sexual assault cases. (Fraser of Dist. 4; Hollingworth of Dist. 23; Colantuono of Dist. 14; Podles of Dist. 16; Record of Hillsborough Dist. 23; Ziegra of Belknap Dist. 6; Burling of Sullivan Dist. 1; Gross of Merrimack Dist. 16; T. Cain of Belknap Dist. 5 - To Judiciary)
- SB 427-FN 41191L 92-2325  
requiring the registration of sexual offenders. (Fraser of Dist. 4; Hollingworth of Dist. 23; Colantuono of Dist. 14; Podles of Dist. 16; Ziegra of Belknap Dist. 6; Record of Hillsborough Dist. 23; Burling of Sullivan Dist. 1; Gross of Merrimack Dist. 16; T. Cain of Belknap Dist. 5 - To Judiciary)
- SB 428-FN 41337L 92-2584  
designating segments of the Connecticut River for the rivers management program. (Disnard of Dist. 8; Blaisdell of Dist. 10; Hough of Dist. 5; Oleson of Dist. 1; Burling of Sullivan Dist. 1; Laurent of Cheshire Dist. 2; Schotanus of Sullivan Dist. 1; Stamatakis of Sullivan Dist. 4; Domini of Sullivan Dist. 5; D. LaMar of Dist. 16 - To Environment)
- SB 429 41274L 92-2603  
relative to selecting engineers, architects, and surveyors by state agencies. (Fraser of Dist. 4 - To Capital Budget)
- SB 430 41166L 92-2138  
relative to the establishment of regional offices for the vocational rehabilitation division. (Blaisdell of Dist. 10; Hough of Dist. 5; Skinner of Rockingham Dist. 21 - To Education)
- SB 431-FN-LOCAL 41365L 92-2673  
creating liens in favor of health maintenance organizations for certain benefits provided. (McLane of Dist. 15 - To Insurance)

- SB 432-FN 41322L 92-2667  
relative to motorcycle noise level limits and imposing fines and penalties for violations of those limits. (Hollingworth of Dist. 23; L. Smith of Hillsborough Dist. 21 - To Transportation)
- SB 433-FN 41225L 92-2025  
relative to the registration and equipment standards of motor vehicles known as street rods. (Shaheen of Dist. 21; Dupont of Dist. 6; Currier of Dist. 7; Julie Brown of Strafford Dist. 11; A. Merrill of Strafford Dist. 4 - To Transportation)
- SB 434-FN-LOCAL 3945L 92-2402  
relative to an education program. (Heath of Dist. 3; Disnard of Dist. 8; Skinner of Rockingham Dist. 21 - To Education)
- SB 435-FN 41263L 92-2605  
relative to temporary, seasonal and part-time state employees. (Currier of Dist. 7; Peyron of Sullivan Dist. 2 - To Insurance)
- SB 436-FN-LOCAL 41336L 92-2602  
relative to aid to the permanently and totally disabled. (Hollingworth of Dist. 23; Podles of Dist. 16; Shaheen of Dist. 21; Copenhaver of Grafton Dist. 12; W. McCann of Strafford Dist. 7 - To Public Institutions, Health and Human Services)
- SB 437-FN 41256L 92-2033  
relative to the New Hampshire Dental Service Corporation and relative to the premium tax on health maintenance organizations. (Disnard of Dist. 8; Shaheen of Dist. 21 - To Ways and Means)
- SB 438-FN-A 41325L 92-2095  
relative to the department of transportation equipment acquisition revolving fund and making an appropriation therefor and relative to redistributing certain funds within the department of transportation. (Roberge of Dist. 9; Hough of Dist. 5; Fraser of Dist. 4; G. Chandler of Carroll Dist. 1; Marsh of Coos Dist. 1; Schotanus of Sullivan Dist. 1 - To Capital Budget)
- SB 439-FN 41339L 92-2268  
relative to the maximum contaminant levels allowed in public water systems and prohibiting permits to be issued for any well to be drilled within a 3-mile radius of any superfund or hazardous waste site. (Cohen of Dist. 24; McCarthy of Rockingham Dist. 18 - To Environment)
- SB 440-FN 41354L 92-2269  
establishing a statewide water conservation program. (Cohen of Dist. 24 - To Environment)

- SB 441-FN-A 41251L 92-2310  
 establishing a statewide enhanced 911 system and continually appropriating a special fund. (Currier of Dist. 7; Hollingworth of Dist. 23; J. King of Dist. 18; Dupont of Dist. 6; Cowenhoven of Hillsborough Dist. 9; Gross of Merrimack Dist. 16; P. Katsakiores of Rockingham Dist. 7; Salatiello of Belknap Dist. 3 - To Executive Departments)
- SB 442-FN 41343L 92-2570  
 requiring the state to agree in negotiations to provide less than 100 percent coverage of medical expenses and to pay no more than 80 percent of health insurance premiums for current and retired state employees. (Humphrey of Dist. 17 - To Insurance)
- SB 443-FN 41321L 92-2624  
 requiring the division for children and youth services to develop, implement and administer an automated case management system. (Dupont of Dist. 6 - To Public Institutions, Health and Human Services)
- SB 444 41358L 92-2660  
 relative to the definition of ski craft. (Currier of Dist. 7; Shaheen of Dist. 21; G. Katsakiores of Rockingham Dist. 7; Stewart of Grafton Dist. 4 - To Transportation)
- SB 445-FN 41331L 92-2670  
 relative to fuel sold to vessels at state piers. (Hollingworth of Dist. 23; Cohen of Dist. 24; MacDonald of Rockingham Dist. 28 - To Ways and Means)
- SB 446-A 41266L 92-2625  
 authorizing construction of exit 10 on the Spaulding turnpike from bonds previously authorized. (Dupont of Dist. 6 - To Capital Budget)
- SB 447-LOCAL 3805L 92-2645  
 increasing the rate of interest paid on the amount of taxes abated. (W. King of Dist. 2 - To Ways and Means)
- SB 448-LOCAL 41275L 92-2594  
 enabling municipalities to grant property tax credits to commercial enterprises making capital investments, increasing net employment, or undertaking research and development. (W. King of Dist. 2; Cohen of Dist. 24; J. King of Dist. 18; Pressly of Dist. 12; Oleson of Dist. 1; Shaheen of Dist. 21 - To Economic Development)
- SB 449-FN-A 41320L 92-2642  
 relative to venture capital and a tax credit against the business profits tax. (Cohen of Dist. 24; W. King of Dist. 2; Hollingworth of Dist. 23; Shaheen of Dist. 21; Gilmore of Strafford Dist. 7 - To Ways and Means)

SB 450-FN 41273L 92-2657  
relative to the industrial development authority. (Dupont of Dist. 6  
- To Economic Development)

SB 451-FN 41340L 92-2669  
to require public hearings on proposed agency rules which result  
in fee changes. (Hollingworth of Dist. 23; Copenhagen of Grafton  
Dist. 12; W. McCann of Strafford Dist. 7 - To Executive Depart-  
ments)

SB 452-FN-LOCAL 41254L 92-2611  
redistricting certain district courts. (Podles of Dist. 16; Hol-  
lingworth of Dist. 23; Martling of Strafford Dist. 4; Marsh of Coos  
Dist. 1 - To Judiciary)

SB 453-FN 41333L 92-2616  
relative to involuntary commitment procedures. (Russman of Dist.  
19; Record of Hillsborough Dist. 23 - To Public Institutions, Health  
and Human Services)

SB 454-FN 41328L 92-2618  
relative to the felony commitment procedure. (Russman of Dist.  
19; Record of Hillsborough Dist. 23 - To Judiciary)

SB 455-FN 41282L 92-2263  
relative to the Pease development authority. (Cohen of Dist. 24; W.  
King of Dist. 2; Hollingworth of Dist. 23; Shaheen of Dist. 21;  
McGovern of Rockingham Dist. 27; A. Merrill of Strafford Dist. 4 -  
To Executive Departments)

SB 456-FN 41222L 92-2567  
requiring parental notification before abortions may be performed  
on unemancipated minors. (Humphrey of Dist. 17 - To Judiciary)

SB 457-FN 41301L 92-2619  
relative to sale of beverages by beverage manufacturers. (Russ-  
man of Dist. 19; Cohen of Dist. 24 - To Ways and Means)

SB 458-FN-A 41323L 92-2636  
creating a credit against the business profits tax for conversion of  
defense production to civilian production. (W. King of Dist. 2; Cohen  
of Dist. 24 - To Ways and Means)

SB 459-FN 41335L 92-2639  
limiting increases in electric rates. (Hollingworth of Dist. 23; W.  
King of Dist. 2; Currier of Dist. 7; Russman of Dist. 19; A. Merrill of  
Strafford Dist. 4; Trombly of Merrimack Dist. 4 - To Economic De-  
velopment)

- SB 460-FN 41366L 92-2245  
 establishing a department of commerce. (W. King of Dist. 2; Cohen of Dist. 24 - To Economic Development/Executive Departments)
- SB 461-FN 41255L 92-2024  
 relative to the New Hampshire port authority and creating a study committee to establish criteria for the merger of the Pease development authority and the port authority. (Cohen of Dist. 24; Hollingworth of Dist. 23; Shaheen of Dist. 21; Ferlan of Hillsborough Dist. 24; A. Syracuse, of Rock. 26 - To Economic Development)
- SB 462-FN 41233L 92-2026  
 relative to optional allowances and beneficiaries under the New Hampshire retirement system. (J. King of Dist. 18; Pressly of Dist. 12; Baroody of Hillsborough Dist. 39 - To Insurance)
- SB 463-FN 41277L 92-2052  
 relative to academic course credit transfers within the university system. (Oleson of Dist. 1 - To Education)
- SB 464-FN 41360L 92-2243  
 relative to intellectual property. (W. King of Dist. 2; J. King of Dist. 18; Shaheen of Dist. 21 - To Economic Development)
- SB 465-FN-A 41160L 92-2583  
 relative to charitable gambling. (Disnard of Dist. 8; McLane of Dist. 15; N. Ford of Hillsborough Dist. 24 - To Ways and Means)
- SB 466-FN 41240L 92-2664  
 providing for informed consent relative to abortion. (Humphrey of Dist. 17 - To Judiciary)
- SB 467-FN-LOCAL 41250L 92-2314  
 changing the interest rates on delinquent property taxes and subsequent taxes and requiring a certificate of tax payment prior to the moving of a building or structure. (Delahunty of Dist. 22 - To Public Affairs)
- SB 468-FN 41362L 92-2390  
 relative to the authority of the ethics committee and relative to reporting gifts and honorariums. (Bass of Dist. 11 - To Public Affairs)
- SB 469-FN 41327L 92-2395  
 relative to retirees' cost of living adjustments, service retirement allowances, and continuing education conferences. (Bass of Dist. 11 - To Insurance)
- SB 470-FN-LOCAL 41351L 92-2564  
 relative to using electronic monitoring devices and community supervision as an alternative to prison. (Humphrey of Dist. 17 - To Judiciary)



- SB 471-FN 41332L 92-2030  
authorizing child day care to certain AFDC clients. (Shaheen of Dist. 21; Hollingworth of Dist. 23; J. King of Dist. 18; Bass of Dist. 11; K. Wheeler of Strafford Dist. 4; Julie Brown of Strafford Dist. 11 - To Public Institutions, Health and Human Services)
- SB 472-FN 41216L 92-2323  
relative to the victims' assistance fund and modifying sexual assault statutes and continuing a study committee. (Fraser of Dist. 4; Hollingworth of Dist. 23; Colantuono of Dist. 14; Podles of Dist. 16; Record of Hillsborough Dist. 23; Ziegra of Belknap Dist. 6; Burling of Sullivan Dist. 1; Gross of Merrimack Dist. 16; T. Cain of Belknap Dist. 5 - To Judiciary)
- SB 473-FN-A 41318L 92-2555  
relative to a fund for organ transplantation and transferring responsibility from vocational rehabilitation to the division of human services. (McLane of Dist. 15; J. King of Dist. 18; Yeaton of Merrimack Dist. 7; Lockwood of Merrimack Dist. 6 - To Public Institutions, Health and Human Services)
- SB 474-FN 41244L 92-2612  
relative to regular sessions of a district court in towns within the district. (Podles of Dist. 16; Hollingworth of Dist. 23; Martling of Strafford Dist. 4; Marsh of Coos Dist. 1 - To Judiciary)
- SJR 1-FN 41367L 92-2383  
requiring the department of education to develop a computer education program for public schools. (Nelson of Dist. 13; Disnard of Dist. 8; Delahunty of Dist. 22 - To Education)
- CACR 29 41247L 92-2661  
Relating To: the governor's veto power. Providing That: the governor shall have line item reduction and line item veto power of items in any bill making appropriations of money. (Humphrey of Dist. 17 - To Internal Affairs)
- CACR 30 41283L 92-2662  
Relating To: election of federal and state representatives. Providing That: the terms of office for the members of the United States Congress from New Hampshire and for the members of the New Hampshire house and senate shall be limited to 12 years and 10 years, respectively. (Humphrey of Dist. 17 - To Public Affairs)
- CACR 31 41234L 92-2563  
Relating To: state spending. Providing That: the total amount of state expenditures shall be limited total general fund expenditures. (Humphrey of Dist. 17 - To Internal Affairs)

CACR 32 4237L 92-2566

Relating To: biennial legislative sessions. Providing That: the general court shall meet biennially. (Humphrey of Dist. 17 - To Internal Affairs)

SCR 10 4262L 92-2233

urging that the dual-chartering system for credit unions be preserved and protected. (Fraser of Dist. 4; M. Hill of Merrimack Dist. 14 - To Banks)

SCR 11 4230L 92-2385

encouraging the U.S. Congress to consider the economic impact of federal laws and legislation on states. (Podles of Dist. 16; Disnard of Dist. 8; Colantuono of Dist. 14; Gross of Merrimack Dist. 16; G. Katsakiores of Rockingham Dist. 7; LaMott of Grafton Dist. 5 - To Economic Development)

SCR 12 4249L 92-2557

concerning the constitution of the United States. (McLane of Dist. 15 - To Internal Affairs)

### RESOLUTION

Senator Hough Resolved that any action taken by the Senate to refer to committee and schedule hearings of Senate bills numbered 300-474 and SJR 1, SCR 10-12, CACR 29-32 are hereby legalized, ratified, approved and confirmed.

Adopted.

### RESOLUTION

Senator Hough Resolved that the Rules of the 1991 Session as amended be adopted as the Rules of the 1992 session until further amended.

SENATOR HOUGH: You have the changes in front of you and simply, if you'd look on page four you will see in bold or darker print, Friday, October 4, 1991, Friday, November 15, 1991 and Friday, December 6, 1991 as the dates that you have been aware of for the introduction and referral of legislation. This resolution adopts these dates for the second session. It is all behind us.

Adopted.

### RULES OF THE SENATE

1. Determination of quorum; correction of Journal.
2. Members, decorum of.
3. Members, conduct when speaking.
4. Members not to speak more than twice.

5. President shall recognize whom.
6. Questions of order, appeal.
7. Member, absenting himself.
8. Motions, order of preference.
9. Questions postponed indefinitely not acted upon in same bien-nium.
10. Questions, when divided.
11. Objections to reading paper, how determined.
12. Roll-Call, everyone must vote.
13. Galleries, clearing of.
14. Reconsideration, motion for.
15. Petitions, introduction of.
16. Bills; shall be numbered and expressed clearly.
17. Bills, introduction of.
- 17-A (a) Bills, deadlines for drafting.
- 17-b Bills, deadlines for information.
- 17-c Final deadline.
18. Resolutions to be treated as bills.
19. Bills shall have three readings; progress of; time for second and third readings.
20. Bills, printing and distribution.
21. Bills amended only on second reading; filing of amendments.
22. Public hearings to be held and advertised.
23. Amended bills, printed, distributed and disposed of.
24. Appropriating money, to whom referred.
25. President to sign bills, etc.
26. Committees, appointment of.
27. Standing Committees.
28. Messages sent to House.
29. Messages, when received.
30. Voting; division of Senate.
31. Visitors to Senate.
32. Hours of meeting.
33. Rules of Senate, how suspended.
34. Rules of Senate, how rescinded.
35. Committee of the whole.
36. President may name member to chair.
37. Senate staff; composition and duties.
38. Senate staff; days of employment.
39. Committees, reports and meetings.
40. Appeal, presiding officer ruling.
41. Motions, no substitution under color of amendment.
42. Conflict of interest.

43. Committee of Conference reports.
44. Personal privilege.
45. Requisition Approval Required.
46. Fiscal notes, requirements.

### SENATE RULES

1. The President, having taken the chair, shall determine a quorum to be present. Any erroneous entry in the daily journal shall be corrected no later than the third succeeding legislative day, and the permanent journal corrected one week after the permanent journal copy is placed in the hands of the Senate.
2. No member shall hold conversation with another while a member is speaking in debate.
3. Every member, wishing to speak, shall address the President and when he has finished shall, if having risen to speak, then sit down.
4. No member shall speak more than twice on the same question on the same day without leave of the Senate.
5. More than one member rising to speak at the same time, the President shall decide who shall speak first.
6. If any member transgresses the rules of the Senate, the President shall, or any member may, call him to order; in which case the member so called to order shall immediately cease and desist, and the Senate, if appealed to, shall decide the case. But if there is no appeal, the decision of the President shall be conclusive.
7. No member shall absent himself without permission from the Senate.
8. When any question is under debate, no motion shall be received but first, to adjourn; second, to lay upon the table; third, for the previous question; fourth, to postpone to a certain day; fifth, to commit; sixth, to amend; and seventh, to postpone indefinitely; which several motions shall have precedence in the order in which they are so arranged. Motions to adjourn, to lay upon the table, for the previous question, and to take from the table shall be decided without debate. Motions to postpone to a certain day shall be debatable both as to time and subject matter. No motion to postpone indefinitely, to postpone to a certain day, or to commit, being decided, shall be in order at the same stage of the bill or resolution, until after adjournment.
9. A question which is postponed indefinitely shall not be acted upon during the biennium except whenever two-thirds of the whole number of elected Senators shall on division taken, vote in favor thereof. Any bill which is indefinitely postponed shall not be reintro-

duced under cover of an amendment to the general appropriations (budget) bill. No motion to suspend this rule shall be permitted.

10. Any member may call for a division of the question when the sense will admit it. Unless otherwise specifically provided for, a majority of those present and voting shall be required to pass any vote.

11. When the reading of a paper or document is objected to by a member, the question shall be determined by a vote of the Senate; and without debate.

12. When the nays and yeas have been moved by a member and duly seconded by another member, each member present shall declare his assent or dissent to the question, unless for special reason he be excused by the Senate. The names of the persons so making the motion and the second shall be recorded in the Journal. A member who is to be absent when the yeas and nays are required may pair his vote with another member, to be present or also to be absent, who intends to vote on the opposite side of the question. Pairs shall be permitted only if the yeas and nays are taken on such question. Both members shall file such pair in writing with the Clerk before the question is put. In all cases of pairing, the vote of neither member shall be counted in determining the result of the roll call; but the Clerk shall announce all pairs and enter them in the Journal. The President shall determine the order to the roll call.

13. In case of any disturbance or disorderly conduct in the gallery, the President shall have the power to order the same to be cleared. The Chairman of the Committee of the Whole may restrict attendance to the duly elected Senators.

14. No vote shall be reconsidered, unless the motion for reconsideration be made by a member who voted with the prevailing side, nor unless the notice of such motion be given to the Senate in open session prior to adjournment on the same day on which the vote as passed, or on the next day on which the Senate shall be in session within one half hour after the convening of the early session, and any such notice of reconsideration shall be effective for three legislative days only and thereafter shall be null and void.

14 (a) Reconsideration of any bills subject to a transfer date established by joint rules must be acted on or before the joint rule deadline, and thereafter shall be null and void.

15. Before any petition shall be received and read, a brief statement of the contents thereof shall be made by the member introducing the same.

16. All petitions, memorials and other papers addressed to the Senate and all bills and resolutions to be introduced in the Senate, shall be endorsed with the name of the Senator presenting them, and with the subject matter of the same. Every bill shall be marked on the first page "Senate Bill" and numbered serially; every joint resolution shall be marked "Senate Joint Resolution" and numbered serially; every concurrent resolution proposing a constitutional amendment shall be marked "Concurrent Resolution Proposing a Constitutional Amendment" and numbered serially; and every other concurrent resolution shall be marked "Senate Concurrent Resolution" and numbered serially, as each bill or resolution is introduced into the Senate.

17. All petitions, memorials and other papers addressed to the Senate and all bills and resolutions to be introduced into the Senate shall be delivered or caused to be delivered to the Office of Legislative Services, which in turn will submit it to the sponsor for his signature, and then to the Clerk by Legislative Services. If requested by the sponsor, a proposed bill, resolution or petition shall not be made public, except by the sponsor; until signed by the sponsor. During any adjournment the President may receive bills and resolutions for printing and for reference to committee, provided that no bill shall have a public hearing until it is formally introduced into the Senate printed and available for distribution. The President shall take up all bills and resolutions for introduction at the early session.

17-A (a) No request by a member of the Senate for drafting a bill or a joint resolution, other than the general appropriations (budget) bill or the capital budget bill, shall be accepted by Legislative Services for processing unless the subject matter of the legislation has been filed with Legislative Services no later than **Friday October 4, 1991**. (old date Thurs. Dec. 12, 1990.)

(b) The Office of Legislative Services shall not draft a Senate bill or joint resolution, other than the general appropriations (budget) bill or the capital budget bill, unless the complete information necessary for drafting such a bill or joint resolution is submitted to Legislative Services not later than 5:00 p.m. on Friday, **November 15, 1991**. (old date Fri. Dec. 28, 1990.)

(c) Every Senate bill and joint resolution, other than the general appropriations (budget) bill or the capital budget bill, must be signed off in Legislative Services by 5:00 p.m., on Friday, **December 6, 1991**. (old date Wed. Jan 9, 1990.)

(d) Notwithstanding the provisions of 17 (a), (b), and (c), a Senate bill, Senate joint resolutions, or Senate concurrent resolution may be accepted by Legislative Services for drafting and introduced into

the Senate at any time prior to the deadline established by Joint Rules for the transfer of bills out of the first body if approved by either a majority of the Senate Rules Committee or a two-thirds vote on the floor.

18. All resolutions which may require the signature of the Governor shall be treated in the same manner as bills.

19. Every bill shall have three readings in the Senate previous to its passage. The first and second readings shall be by title only which may be accomplished by a conglomerate resolution, after which the bill shall be referred by the President to the appropriate committee and shall be printed as provided in Rule 20, unless otherwise ordered by the Senate. No bill after it has been read a second time shall have a third reading until after adjournment from the early session. The time assigned for the third reading of bills and resolutions shall be in the late session unless otherwise ordered by the Senate. The orders of the day for the reading of bills shall hold for every succeeding day until disposed of.

20. After every bill shall have been read a second time, and referred by the President to the appropriate committee, the Clerk shall procure a sufficient number of copies, printed on paper of uniform size, for the use of the legislature, and cause the same to be distributed to the members, and when printed the bill shall be immediately delivered to the committee to which it shall have been referred. Bills received from the House shall be printed at the same stage of their procedure unless they have been printed in the House and copies distributed in the Senate, in which case any amendment made by the House shall be duplicated and distributed in the Senate.

21. No amendment shall be made but upon the second reading of a bill; and all amendments to bills and resolutions shall be in writing, with the name of the Senator and the district he represents thereon. No amendment to any bill shall be proposed or allowed at any time or by any source, including a committee of conference, except it be germane. Amendments shall have been reviewed by the Office of Legislative Services for form, construction, statutory and chapter reference.

22. A hearing shall be held upon each bill referred to a committee, and notice of such hearing shall be advertised at least 5 days before hearing in the Senate Calendar.

(a) All bills in the possession of committees shall be reported out with one of the following recommendations: ought to pass, ought to pass with amendment, re-refer to committee, inexpedient to legislate, or refer for interim study. Re-refer to committee shall be a com-

mittee report only in the first-year session; refer for interim study shall be a committee report only in the second year.

(b) If a bill is reported re-refer to committee, it shall read re-refer to committee for action in the second-year session. Bills which have been re-referred to the committee on Finance shall be referred by Finance to the original committee to which it was assigned when the senate adjourned from the first session. All re-referred bills shall be reported by the committee on or before the fifth legislative day of the second-year session.

23. When a bill is reported favorably with an amendment, the report of the committee shall state the amendment, and then recite the section of the bill in full as amended. The amendment shall be printed in the calendar of the Journal on the date that the report is listed for action. If no action is taken on that day, then the amendment shall be printed on the day to which the bill has been referred. All bills reported shall be laid upon the table and shall not be finally acted upon until the following legislative day, and a list of such bills with the report thereon shall be published in the Journal for the day on which action shall be taken.

24. Every bill and joint resolution appropriating money, which has been referred to another committee and favorably accepted by the Senate, shall be committed to the Committee on Finance for review. If any such bills have been referred jointly to the Committee on Finance and another standing committee, the Committee on Finance may report separately and a further public hearing may be held at the discretion of the Committee on Finance. All bills appropriating money, which are referred to the Committee on Finance may have only one hearing.

25. All warrants, subpoenas and other processes issued by order of the Senate shall be under the hand and seal of the President attested by the Clerk.

26. All committees of the Senate, including Senate members on committees of conference, shall consist of members of both parties as nearly equal as possible, provided that on all committees, both parties shall be represented. The President shall appoint the members of all committees, after consulting with the minority leader.

27. The standing committees of the Senate shall be as follows: The Committee on Finance, Committee on Capital Budget, Committee on Ways and Means, Committee on Banks, Committee on Economic Development, Committee on Education, Committee on Executive Departments, Committee on Environment, Committee on Insurance, Committee on Internal Affairs, Committee on Interstate Co-



operation, Committee on Judiciary, Committee on Public Institutions, Health and Human Services, Committee on Public Affairs, Committee on Transportation, Committee on Wildlife and Recreation, and the Committees on Rules and Resolutions, Journal, and Enrolled Bills.

28. Messages shall be sent to the House of Representatives by the Clerk of the Senate.

29. Messages from the Governor or House of Representatives may be received at all times, except when the Senate is engaged in putting the question, in calling the yeas and nays, or in counting the ballots.

30. All questions shall be put by the President, and each member of the Senate shall signify his assent or dissent by answering yea or nay. If the President doubts, or a division is called for, the Senate shall divide. Those in the affirmative on the question shall first rise from their seats and stand until they be counted. The President shall rise and state the decision of the Senate.

31. No person except members of the executive, or members of the House of Representatives and its officers, shall be admitted to the floor of the Senate, except by the invitation of the President, or some member with his consent.

32. The Senate shall adjourn to meet on the subsequent legislative day for the early session at the time mentioned in the adjournment motion. The late session shall immediately follow the early session unless the Senate shall otherwise order.

33. No standing rule of the Senate shall be suspended unless two-thirds of the members present vote in favor thereof. This rule shall not apply to Senate Rule 9.

34. No rule shall be rescinded unless two days notice of the motion has been given and two-thirds of those present vote therefor.

35. The Senate may resolve itself into a Committee of the Whole at any time on motion made for that purpose; and in forming a Committee of the Whole, the President shall leave the chair, and appoint a chairman to preside in committee.

36. The President, when performing the duties of the Chair may, at any time, name any member to perform the duties of the Chair.

37. The staff of the Senate shall be comprised of a clerk, an assistant clerk, a sergeant-at-arms, and a door-keeper who are to be elected by the Senate, and such other personnel as the President

shall appoint. The President shall define the duties of all members of the Senate staff which are not fixed by statute or otherwise ordered by the Senate.

38. Each member of the staff of the Senate shall be available on call to carry out the work of the Senate.

39. The committees shall promptly consider and report on all matters referred to them. The President may authorize such committees having a heavy load of investigation, redrafting, research or amendments to meet as needed on non-legislative days during the legislative session. The Clerk of the Senate shall prepare a list by number, title and sponsor of all Senate bills and resolutions in committee which have not been acted upon within one week before the deadline established for the transfer of bills and resolutions from the Senate to the House of Representatives, and he shall distribute this list to every member of the Senate as soon as it is prepared.

40. Any appeal from the ruling of the presiding officer shall be decided by majority vote of the members present and voting.

41. No new motion shall be admitted under color of amendment as a substitute for the motion under debate.

42. No member shall vote on any question in which he is directly interested; nor shall he be required to vote in any case where he was not present when the question was put; nor sit upon any committee when he is directly interested in the question under consideration. In case of such interest of a member of a committee, the fact shall be reported to the Senate and another person may be substituted on that question in his place.

43. Action on the floor of a report of the Committee on Finance or a Committee of Conference on either the general appropriations (budget) bill or the capital budget bill, shall not be taken by the Senate, until said report has been available from the Senate Clerk twenty-four hours in advance, in written form. Nongermane amendments and footnotes to such bills (except footnotes in explanation of the principal text of such bills or designating the use or restriction of any funds or portions thereof) are prohibited and shall not be allowed under any circumstances.

44. PERSONAL PRIVILEGE: A Senator may, as a matter of personal privilege, defend his position on a bill, his integrity, his record, or his conduct, against unfair or unwarranted criticism, or may speak of an issue which relates to his rights, privileges or conveniences as a Senator; provided, however, the matters raised under personal privilege shall not be subject to questioning, answer, or debate, by another Senator. Personal Privilege remarks may be in-

cluded in the Daily Journal if requested by the Senator, and in the Permanent Journal by vote of the Senate. A Senator may speak on other matters of his choosing and in such cases may be subject to questioning and/or answer according to the Rules of the Senate.

45. No officer or employee of the Senate during the session or any adjournment thereof shall purchase or contract for the purchase, pay or promise to pay any sum of money on behalf of the Senate or issue any requisition or manifest without the approval of the Senate President.

46. If a drafting request for a bill or resolution has been filed with the office of Legislative Services requiring a fiscal note as provided in RSA 14:44-47, the substance or a draft of the proposal may be provided to the legislative budget assistant for preparation of the required fiscal note without the specific consent of the sponsor of the proposal, provided that the identity of the sponsor shall not be disclosed.

Recess.

Out of recess.

### HOUSE MESSAGE

The House of Representatives has passed the following Bill with the following title, in the passage of which it asks the concurrence of the Senate:

**HB 1000**, establishing a study committee on certain issues regarding the next constitutional convention and authorizing a special election for electing Concord charter commission members.

### SUSPENSION OF THE RULES

Senator Delahunty moved that the Rules of the Senate be suspended to dispense with the referral to committee, holding of a hearing, the notice of a committee report in the calendar, and that the bill be put on Second Reading at the present time.

**HB 1000**, establishing a study committee on certain issues regarding the next constitutional convention and authorizing a special election for electing Concord charter commission members.

**SENATOR HEATH:** Senator Delahunty, could you just tell me a little more about what this is about?

**SENATOR DELAHUNTY:** Senator Heath, I would be delighted to. HB 1000 would establish a committee to discuss and make recommendations on issues relating to a Constitutional Convention. Traditionally, New Hampshire holds Constitutional Conventions once

every ten years. Specifically, the committee established by this bill will look at how redistricting will effect the election of delegates, when the delegates should be elected and who should pay for the cost of the election and what facilities will be used now that the legislature holds annual sessions and the cost associated with the convention and how these cost will be paid for. Basically, the bill will allow the logistics of the convention to be determined in a timely manner and prior to the authorization of the convention by the voters of the state. The report of the committee will be presented on or before September 1, 1992. In addition, the bill authorizes the city of Concord to hold a special election for charter commission members in conjunction with the February 18, 1992 Presidential primary. By allowing this, the city will save approximately \$10,000. It is for this reason that we are seeking to pass this measure in such an expedited manner.

SENATOR HUMPHREY: Senator Delahunty, what is the big rush?

SENATOR DELAHUNTY: I just explained it. It is explained at the bottom. The rush is to expedite this to help the city of Concord. I think Senator McLane can better address that particular concern than I can.

SENATOR HUMPHREY: If we proceed under ordinary procedures, why isn't that sufficient? I mean why can't we have a hearing about the need for this bill? I mean, here we are in the first minutes of this new session, in the new year and something as terribly important as a constitutional convention is being rushed through, or is an attempt to rush it through without so much as a hearing? Did the House have a hearing on this bill?

SENATOR DUPONT: Yes, they did.

SENATOR HUMPHREY: Well the Senate has obviously not, and I for one, object to the haste with which this is being pursued. What is the harm in proceeding in the ordinary fashion?

SENATOR DELAHUNTY: I would like to defer to Senator McLane.

SENATOR MCLANE: This bill calls for a study committee on the constitutional convention. This is the first time that . . . the constitution calls for a constitutional convention every ten years. It is automatically on the ballot. This isn't a question of whether we have a constitutional convention or not, the question is, when does the question go on the ballot and how can a constitutional convention fit into our now annual sessions? We haven't had annual sessions except in the last ten years, or less than that? So that is one of the problems. All it does is call for a study committee. It seemed the least

harmless vehicle to put on an amendment which is extremely important to the city of Concord. The city of Concord has voted for a charter commission. There are a group of people who are running for the charter commission. The election has to be held within statute, within a certain time frame after they called for a constitutional convention, which would mean that we would have a special election on January 18. Very few people would show up and it would cost \$10,000. There are other questions going on the Presidential primary ballot. For instance, the method of the redistricting. So it is perfectly appropriate to have another nonpartisan question on that ballot. It is just a matter of, literally, convenience and money for the city of Concord. They have already decided to have a charter commission and it is just a matter of not having to hold a special election and that is the rush.

SENATOR HUMPHREY: I would respectfully suggest that some may wish to cast their vote for or against suspension based on the merits. I mean . . .

SENATOR DUPONT: Senator, that is fully within your power to do so and I would encourage you to do that.

SENATOR HUMPHREY: I think it is well to debate the matter and the substance and the merits of the matter before we get to the parliamentary question of whether we should suspend the rules or not.

SENATOR HEATH: I'm not sure in thinking about it, I think that perhaps my question goes more to the suspension of the rules.

SENATOR DUPONT: Senator, please go on. I am not trying to stop the debate in any way.

SENATOR HEATH: Senator McLane, I guess I don't disagree with solving Concord's problems. I just, in quickly glancing at this, I look at one reason I think that this bill is a vehicle to the Concord thing. I think that there will be other opportunities as on the first page. I just glanced down at the committee that is established on the constitutional convention and I noticed that Judiciary is entirely missing. Which it seems to me, that the constitution ought to be addressed with at least one representative of the Judiciary. That would be something that I think that a hearing would bring out and that is why I think that this may be a little hastily drawn legislation. Is there not some other vehicle that we could serve Concord's legitimate interest for them?

SENATOR MCLANE: The questions are not constitutional questions that this committee will be discussing. The questions are the site, the time, the timing of the election, who pays for the election,

all of those questions. I can think of a lot of people that wouldn't mind having their names put on. The Governor has a designee if he feels that there should be a member of the Judiciary.

SENATOR HEATH: I understand what the duties are, but I guess what I am saying, is that that committee is addressing the constitutional convention and it is composed of two branches, but not three branches of state government. That is where I think those issues are important. I don't think those are just legislative or gubernatorial issues that are spelled out as a duty for that committee. That is the kind of reason I guess, that I object and wish you had a better vehicle.

SENATOR MCLANE: I think that we searched long and hard to find a vehicle that was noncontroversial. It seemed to us that a study committee, or to me, perfectly adequate representation was a good vehicle. The Senate is not going to meet again until it would be too late for Concord not to have a special election and so this is the vehicle that we have chosen. I am sorry, I think that you have tried very hard to find some problems with it. I don't happen to agree that that is one.

SENATOR HEATH: I have looked at the first page, Senator, I wasn't trying to find a problem with it. I will help you in any way that I can in the Concord process.

SENATOR HEATH: Mr. President, parliamentary inquiry? Is it possible and at what point would it be possible to divide the question so that we could leave the Concord solution on there and withdraw this and then bring the bill through a legitimate hearing process to do the main body of the work that is proposed in HB 1000?

SENATOR DUPONT: The bill is before us now . . . TAPE INAUDIBLE . . . and you could move that the rules are suspended to allow the bill in.

SENATOR NELSON: Senator McLane, just a little history on the bill, please?

SENATOR MCLANE: Yes.

SENATOR NELSON: In the House when they had the hearing, the city fathers and mothers were present and supported this strongly. Were the elected officials from the city of Concord there?

SENATOR MCLANE: The former mayor, there were numerous people. We had the ethics meeting that morning, it was yesterday morning so I didn't stay throughout the hearing, but it was a full-blown hearing. Representative Caroline Gross is the sponsor of the bill and she spoke to the issue and that is all that I know about it,

except that I don't think a study committee seemed to us to be the safest place to put this sort of a measure.

SENATOR NELSON: Are the present officeholders of the city of Concord, the Alderman or the Councilors or the present Mayor involved in this? Do you know if they were at this and they were supporting it? I am just trying to get a handle on this. I just want to know if they support this.

SENATOR MCLANE: The question of whether to have a charter commission was fully debated in the city of Concord. It won, I think two to one, the issue. Most people, I am sure that there is some element of being against the city manager in this and I would not be one to be greatly enthusiastic, but I think that I know that the people have spoken very clearly, that we will have a charter commission. We will discuss whether we keep our city manager form of government and it is best to do it in the least expensive and expeditious way.

SENATOR BASS: As a point of order, we are now addressing whether or not to suspend the rules to allow for consideration of this bill? If that is the case I would like to speak in favor of the motion to suspend the rules. I think that Senator McLane has stated pretty clearly why we need section four of the bill. The city of Concord has a special election situation for a city charter commission and it is obviously, in their best interest to save money in having a special election, and also to insure that there will be a better turnout for this, what I consider to be an important issue for the city of Concord. The other issue which has been alluded to is to the question of whether or not we should have a study committee to deal with the constitutional convention issue. This is a particularly unusual situation we are in this year and next. As you know, the Con. Con. is supposed to be held in May of 1994, unlike most years that this has occurred there is no Presidential preferential primary in the year that the convention is going to occur. So the question comes up as to when you should elect the delegates for May of 1994. Clearly, if there is no Presidential primary in February, the next election before that is the one in November and then before that, September, and then before that, the town elections next spring. There is some feeling that certainly it would be a serious problem to have the Con. Con. elections in a nonpartisan election mode in March when you're electing town officers. The whole point of this discourse ended up with a feeling that because this is very unusual, perhaps the only time in the 20th century that this has occurred that we needed to have a committee begin immediately to study this issue and make recommendation, be they statutory to the bodies, not in three or four

months, but immediately, because this is not an issue where any individual group has a hidden agenda, that Republicans are trying to elect Republicans or Democrats trying to elect Democrats. It is in the interest of the process and good voter participation and the election of the qualified people in the Con. Con. to begin this study immediately. As the Chairman of Public Affairs to which this bill would be sent if the rules were not suspended, I fully support the passage of this bill at this time, the suspension of the rules to allow passage of this bill at this time.

SENATOR W. KING: Senator McLane, yesterday I was in the bank and ran into a person who is involved in Concord city government and he mentioned this election and mentioned that there was controversy within the town, within city government and among people in the town over whether or not the election should be changed. He seemed to suggest that there was a political agenda behind the changes. Would you just address whether or not there is unanimity on this and whether or not the people in your town, the city of Concord knew that this bill was going to be before us today?

SENATOR MCLANE: I think there was a long article in the Concord Monitor written by the former Mayor who is Martin Gross, who is the husband of the House Majority Leader. Obviously, people are aware that we are going to have a charter commission because they voted for it, overwhelmingly. They know who is on it and I cannot think of anyone who isn't in favor of saving \$10,000. I can think of no one who would feel that you needed a special election just for this issue at that cost. I don't think that it is to either side's advantage.

SENATOR W. KING: I want to reiterate one question and that is, did the people of the city of Concord know that this bill was going to be on the floor of the Senate today and it would include a change of the date of an election?

SENATOR MCLANE: Very definitely. They were aware of the public hearing. There was a public hearing yesterday. I also think that the controversy, as I said before, goes around the issue of whether we have a city manager or not. That is controversial and obviously, the charter commission itself will be controversial. But I should think that everybody in that instance would be happy to have the election put off for two more weeks or three more weeks and to have a lot of people coming out in which they will for a Presidential race.

SENATOR HUMPHREY: Mr. President, I would like to address a question to the President. Is Senator Bass correct, that this bill ordinarily would be referred to Public Affairs?

SENATOR DUPONT: Yes, it would be, Senator.



SENATOR HUMPHREY: That is extraordinary that something as utterly sensitive as a constitutional convention would not go before the Judiciary committee. Is that correct?

SENATOR DUPONT: Senator, the Public Affairs committee has traditionally been the committee that has dealt with issues that involve the election process in the state and the make up of the ballot and those types of issues. Traditionally, those have gone before it as was indicated to you earlier. The question of whether we have a convention or not, is not decided by this body, it will be decided by the voters. That, we have no control over.

SENATOR HUMPHREY: Yes, if I may respond. That is quite so, but we are proposing here to name a study committee that will study certain respects of the constitutional convention, a certain study in respects of holding a constitutional convention. I would like to suggest that tradition is wrong. Governor Gregg said that we could break with tradition in his speech just a moment ago, I would like to suggest that anything that has to do with something as utterly foundational and organic as a constitutional convention, ought to go before the Judiciary committee.

SENATOR DUPONT: Senator, the assignment of the bill is made by the Chair, so you can't change that today because this bill will have no hearing, based on what our actions are. I will only tell you that there is legitimate reasons for the establishment of the study committee. There is going to need to be legislation filed if the convention is going to be held before 1995 that will deal with the funding issue and where the convention will be held. Because unfortunately, we are in annual sessions and the building may not be available. The legislative leadership, myself included, feel quite strongly, that if it is not input to at least look at the issues so that in effect if it is voted in November, we have some answers to our constituents about how we are going to deal with the mechanics of it. Quite frankly, given the cost of the convention, it might be nice to wave in front of them the fact that it is going to cost \$50,000 or \$100,000 to host this convention.

SENATOR HUMPHREY: Senator Bass, if the Senate declines to suspend the rules, are you prepared to hold an early hearing on this bill?

SENATOR BASS: Certainly, if it is referred to my committee.

SENATOR HUMPHREY: Mr. President, if it is treated in the conventional way, is there any reason that we can't bring the bill to the floor virtually, immediately following such a hearing?

SENATOR DUPONT: We would have to hold a Senate session to do that, Senator, and we are not scheduled to do that until February.

SENATOR HUMPHREY: Well fine. So much for the questions. I would like at some point to be recognized for the purposes of remarks.

SENATOR HEATH: Mr. President, I am rising in opposition to the pending motion to suspend the rules. I think that we ought to have something that arises a little higher in emergency to suspend our rules and to suspend the process. Now I am not unsympathetic to Concord's plight, but I think that we could have handled that with a hearing and find out if there is anything else going on and if this is part of a political game or if this is just something that helps out the city. I am not adverse to helping out a city, but that is why we have hearings. The other portion of this bill for godsakes is, you know, the man, Mr. Ethics over here, wants to violate the process when he says it's a very complex thing, and I agree. I mean we are going to suspend the rules. We did it once for triple glazed windows and I suppose you can cite that as a precedent, but I don't think that we should step up to that level to violate our own process. These are things that can be taken care of and I think that they legitimately, need an open hearing in the Senate. I don't think that all the wisdom resides in the House, if they indeed did have a hearing on this. I would urge you, although I suspect you won't do it, to refuse to suspend the rules for something that doesn't rise to a level of emergency. There is an easy and timely way that we can remedy both of these bills and get a look at them in a normal process. I'd urge you to refuse to suspend the rules and do it in the normal process and not do it in this way which I think shows us up very badly everytime we do it. We don't know what we are doing when we operate in the blind without a hearing and a notice to the public what we are doing. So I would urge you not to suspend the rules.

SENATOR J. KING: This bill here, am I assuming right in saying that it doesn't mandate that Concord follow this? It authorizes them to do it if they want to do it?

SENATOR MCLANE: Yes. It is authorized, absolutely.

SENATOR CURRIER: Senator Heath, isn't it in fact in terms of the time frame, an emergency? If in fact the city of Concord wants to save \$10,000 that in lieu of having a special election sometime, let's say in the summer time, to have this passed today so that they could in fact use the Presidential preference primary as a time to hold that decision that the city fathers and the rest of the elected in that town would actually have to vote on the charter commission members and so forth? Isn't that an emergency in terms of the time frame?

SENATOR HEATH: We could have a hearing on both these bills next Tuesday and have a five minute session, late Tuesday afternoon and be done with it and have followed procedure with the proper notice. That is the kind of thing that I am talking about. There is a way to do it. We are going to be down here, we are loaded with hearings this next week, it's not like we are going off on some vacation, god forbid, and would have to make a special trip to Concord. We are all going to be here this next week for hearings. If you have seen your calendar, you can verify that. It would take a very short time to do this in the proper fashion. I think that suspension of the rules ought to be held for those very special times and situations where we don't have alternatives through the normal process.

SENATOR HUMPHREY: Mr. President, a great deal has been rightly made of the Ethics guidelines which have just come to our hands. I would call my colleagues attention, especially my friend, Senator Bass, to page two, the third principle, the third principle of accountability. Legislators should assure that government is conducted openly. That means giving everyone a chance to say their piece before you vote up or down on a piece of legislation. We haven't done that in the Senate. We don't know how comprehensively or fairly or objectively they did that in the House. But whether they did it superbly or otherwise is not our business. Our business is to conduct openly public business on this side and what we are proposing to do violates flagrantly, this very principle, may I point out. I have heard, I don't know if it's correct, but that this is not a business matter in which people unanimously agree. I hear that there are some people who want two separate dates for these respective elections. That is not efficient, it is more costly. I don't know who is right or who is wrong. How am I suppose to know, we haven't had any hearings? How is anyone suppose to know? How is anyone in the public suppose to have a chance to speak, any member of the public to speak his or her mind when we ramrod and railroad through a bill like this without a hearing? Now there is a way to deal with the Concord situation, I would suggest. Since there is something of a problem with the element of time. If the Senators are disposed, I would prefer to have a hearing, because I don't think it is quite as unanimous as some in the city of Concord would have us believe, but that is Concord's business, I don't represent Concord and I am willing to take Senator McLane's recommendation on that point, but let me just suggest to you colleagues, that a better way to do this while still accommodating Senator McLane is to back up, withdraw this motion and in some way, bring before the body right now, this bill, so that it only encompasses item number four which pertains to the city of Concord. Let's give Senator McLane what she wants out of

collegial courtesy and all that good stuff. Let's subject to the normal hearing process and the normal process of accountability and all of this other stuff that pertains to the procedures by which constitutional conventions are held. I would urge that course of action and if the President is willing, either the motion can be withdrawn, I guess, or we could defeat the motion quickly, and we can have before us just this thing that deals with Concord, none of this other blank check stuff about a constitutional convention and deal with that very important part in the regular way through the regular committees. I would hope that we could do that even though I am willing to say that's somebody else's idea if it will get more votes. One way or the other, really, there is a better way to do this while accommodating Senator McLane. I am always a little worried when people talk about making the election process more efficient, but nonetheless, I don't represent Concord and I will leave that to Senator McLane as I am sure all of us are willing to do. But really, why don't we separate this thing. Can't we back up and do this thing in a way that is a little more orderly and a little more responsible, and that there is a record with these principles of ethics of which we are making such a great deal today?

SENATOR DUPONT: Before we go into the voting mode, I would like to add a little bit to what has been said. This process started several months ago when it came to my attention that the House in fact wanted to modify the voting schedule for when this convention would be held. Several issues were raised, and at my recommendation, this piece of legislation was put together so that in fact the issues that they had raised, but not the timetable for holding this convention or when the vote would be taken could be addressed so that when this question does go before the voters next November, that they will have an opportunity to have some of the facts about how this convention will be held in front of them, including the cost, which I think is significant enough for all of us to worry about. Now, you could argue the urgency of whether or not this ought to be done today. The question that I proposed is that if it is done today, then perhaps the bulk of the work can be done during the legislative session so that many of us who don't particularly like to come to Concord during the summer, can get this work done before we adjourn. Hopefully, when we go forward that you will have some information to tell your constituents about what a convention is, where it is going to take place and how it is going to be paid for, which I think are all legitimate questions. So I just add that to the discussion. The vote will be on whether we suspend the rules to allow the introduction.

SENATOR MCLANE: I have a question of you, Mr. President. Isn't it your assumption, that this committee will be holding public hearing, and that there will be an opportunity for input into this committee?

SENATOR DUPONT: Senator, this committee will hold public hearings. Any recommendations if they include cost or changing of any of the processes, will have to go before the legislature. This is not a committee that will decide whether a constitutional convention will be held. That is not within our powers. This is merely to try and plan for what happens, if in fact, the convention is voted on by your constituents.

Senator Blaisdell has moved the question.

Adopted.

A roll call was requested by Senator Heath.

Seconded by Senator Blaisdell.

A 2/3 vote is required.

Question is on the motion of to suspend the rules.

The following Senators voted yes: Oleson, Fraser, Hough, Dupont, Currier, Disnard, Roberge, Blaisdell, Bass, Nelson, Colantuono, McLane, J. King, St. Jean, Shaheen, Delahunty, Hollingworth, Cohen.

The following Senators voted no: W. King, Heath, Pressly, Podles, Humphrey.

Senator Russman is excused for the day.

Yeas 18

Nays 5

The necessary 2/3 vote is acquired.

Suspension of the rules is adopted.

SENATOR HEATH: I moved to divide the question between the question of the Concord election and the question of the establishment of the committee.

Senator Heath moved to divide the question.

SENATOR MCLANE: I want to speak in opposition to the motion for no other reason that I think that we have gone over the issue. All that we are doing is appointing a committee to provide us with the facts so that we as a body and the people of the state of New Hampshire can discuss and vote on the issue of a constitutional convention. The emergency that Concord feels, the \$10,000 they are going to save and the ease in which they would be facing a question of a

charter commission and the election of whatever number out of 65 that are nominated. That issue is a different one, but I believe that we can go ahead with both of them at the same time.

SENATOR DUPONT: Senator Heath, for the purposes of clarifying your motion. The section you choose to divide out would be after section three? I need clarification on where you want to divide the question?

SENATOR HEATH: I guess section four would be eliminated for the purposes of one part of the division and section four would be the entirety of the other.

SENATOR DUPONT: You want to separate out section four and five?

SENATOR HEATH: Mr. President, I wonder if I could speak to my motion?

SENATOR DUPONT: Yes, go ahead.

SENATOR HEATH: Very briefly. Senator McLane talked about the fact that this committee would have hearings as the committee would study the question of the Con. Con. and that is fine, but the first question looking at it to me was the absence of the Judiciary from that committee. So it is not what they are going to do and I don't have any immediate problem with most of the language in there. I don't know what the first question, how the redistricting will affect the election or delegates, I am not really sure that that is a proper thing for a committee established in law to look at. That is sort of prognosticating and it tiptoes along the lines of some political warfare, but aside from that, I just think the make-up of that committee ought to represent the three branches, and I think that we have a proper way to do it if Concord has an emergency. I guess because I spent the time in the committee, I am willing to go the distance and give them the benefit of the doubt because I know you will wear it, Susan, if it goes wrong, I won't. So I am willing to allow you to do that, but I do think that we ought to adhere to the process on this other bill that doesn't have that kind of an even near emergency. I think that TAPE INAUDIBLE . . . it isn't a real emergency. So I would ask you to divide the question and to pursue, if you would, the Concord portion and allow them to do their thing and to leave the rest to a process that I think has worked very well on average over the history of this body and not to get into suspending rules for very little good reason. I would urge you to re-consult your consciences, which you maybe had a conversation with a few minutes ago, and didn't arrive at a conscientious conclusion. Re-consult them on this and go halfway, allow Concord to do its thing and allow the legislative process to continue with some integrity. Thank you.

SENATOR HUMPHREY: Mr. President, I want to urge my colleagues to support Senator Heath's motion. Truly, there is no emergency with respect to this study committee. Indeed the fact that the committee is not required to report before September 1, 1992, tells us as much. There isn't a reason in the world that we can't divide this question, send this stuff relative to a study committee that will look at the constitutional convention process to the relevant committee, have hearings, bring it to the floor, debate it, deal with it in the usual responsible way. Again, I call my colleagues attention to this third principle of accountability. Legislators should assure that government is conducted openly, equitably, and honorably and in a manner that permits the citizenry to make informed judgements. Informed judgements that hold government officials accountable. We rush things through here, railroad things through without a hearing, of a very significant nature, how is that consistent with conducting government openly or making it possible for citizenry to make informed judgements about our actions? We are not even giving the citizens in this body a chance to come in and comment on the legislation. Really, it is shameful and there isn't a reason in the world to do this, except maybe, someones pride.

SENATOR PRESSLY: Senator McLane, my major concern of this whole legislation is section four. In these economic times it is very, very tough to be lured by saving \$10,000 to cut short some procedures that are very founded. My understanding of good government is that it is important throughout the state that your state and federal elections and election dates be separated from the government of the local municipality. I believe that that is not the case throughout the whole state?

SENATOR MCLANE: Sometimes and sometimes not.

SENATOR PRESSLY: Your effort in this then also is to combine your local municipal business with a Presidential primary business?

SENATOR MCLANE: I believe that I was very clear that there is another issue on the ballot already having to do with reapportionment. That this would be a second issue that was not connected with the Presidential primary. This is not only a convenience, but I think that it is a democratic step. I think that you are well aware that Concord is very careful to have separate school and city elections. Many fewer people vote. We feel that not only is it a matter of convenience for people to come once and do their municipal and Presidential business, but that more people will show up and that that is always a benefit to democracy.

SENATOR PRESSLY: The redistricting I don't think is a problem because that does apply to all elections. What concerns me, is that

the charter commission that you want included in that Presidential primary is strictly for your city and so it is a charter for your city government charter. That is where I am having a philosophical problem.

SENATOR MCLANE: Maybe I haven't made myself clear. We have already passed the issue of whether or not to have a charter commission. That was a hotly debated issue. There were people for and against it. It won 2 - 1. Now the issue is, who will be on the charter commission? So it is merely a matter of voting for a list of people and I think that it is to everyone's advantage to put it off for another couple of weeks and to have it at a time when a great number of people will be coming to the election and to save \$10,000.

SENATOR PRESSLY: Will this legislation apply only in this one instance?

SENATOR MCLANE: I think it is very clear that it allows the city of Concord to have a special election at a time other than what the RSA's call for which is within a time frame of when they picked, of when they decided to have a charter commission and when they will pick the members of that charter commission.

SENATOR BASS: Mr. President, it is my understanding that HB 1000 is a bill which has passed the House and is currently before the Senate. We discussed the question of the public hearing process in the House. Now let's assume that Senator Heath's motion is successful and we strike this study committee section from the bill. The Houses' House Bill 1000, obviously, would be different than the Senate version of the House, so we would have to appoint a committee of conference and we could wait around as long as we need to. So we may or may not complete our deliberations on the city of Concord issue this afternoon. Now I know that Senator Humphrey does not want to waste taxpayers dollars by requiring us to have another special session solely for the purpose of dealing with only the question of establishing this study committee. That issue notwithstanding, let's assume that the whole thing can be worked out this afternoon and the bill is sent along to the Governor's office. It will go through an enrolling process and we will be lucky even from the city of Concord's standpoint if it's successful, if it gets there soon enough. But that still leaves the question of whether to have this study committee hanging. Now with House Bill 1000 gone, that means that there really is no vehicle left in the Senate or the House for the consideration or the creation of this study committee. That would leave me as an individual who does indeed believe in the principles of accountability, with the unpleasant option of having to draft an amendment to a potentially nongermane bill in my committee, ei-



ther before or after a public hearing to bring it before the Senate in order to establish this committee. Now let's just assume that that amendment which I would very regretfully have to do in order to accomodate this situation were successful, I would be back before this body, it would pass on a House Bill or Senate Bill, it would have other language and other issues and that would go to the House. Then the House would run it through its public hearing process which of course has already occurred on this issue to begin with and we would go back through here again. It would go back through enrolled bills, back to the Governor, and then to make a fairly long story short, we would be able to establish this committee sometime, obviously, there would be an appointment process. The first called member would have to advertise a notice for a week in the calendar before the committee was called and we would have our study committee in place, reasonably, by say May or June. Now, I think the people of New Hampshire have the right and we have the responsibility to provide them with information regarding this rather unusual situation that we are facing. If we really want to have a constitutional convention that is created with the consent and support of New Hampshire people that are informed, I think that we would be best off to abide or to follow this principle of accountability by passing this study committee now, because it is indeed in the best interest of the people of New Hampshire.

SENATOR HEATH: Senator Bass, I appreciate your explanation of how costly and inconvenient the process is and I am surprised, hearing it from you that you didn't also remember and I guess I want to ask you if you do not understand that there is an easier way to do this? We divide the question. We can then request another suspension of the rules which would allow the two bills to be entered separately and simultaneously go to hearings and go through the regular process. Surely you understand that that is an easier way to do it than the long drawn out way that you explained to us was the only alternative you seem to see. Am I correct in understanding that you would understand that that was an easier way and a quicker way to do it?

SENATOR BASS: In answer to your question, Senator Heath, I would remind you that the nexus of your concern is whether or not the Senate Public Affairs committee has held a public hearing because the rest of the process to this date has been observed. I don't believe that the emergency of that problem as necessitates the further suspension of the rules through a completely new process which clearly will not be as quick, no matter which process you use as the one that we are proposing to do today.

SENATOR HEATH: To clarify your premise. No, my concern is that this bill dealing with establishing a committee to study the Con. Con. needs to have a hearing. It needs to have the public input if they so choose to and that that is what we are missing by not dividing the question.

Senator Blaisdell moved the question.

Adopted.

A roll call was requested by Senator Heath.

Seconded by Senator Blaisdell.

Question is to divide the question on HB 1000.

The following Senators voted yes: Heath, Roberge, Nelson, Podles, Humphrey, St. Jean.

The following Senators voted no: Oleson, W. King, Fraser, Hough, Dupont, Currier, Disnard, Blaisdell, Bass, Pressly, Colantuono, McLane, J. King, Shaheen, Delahunty, Hollingworth, Cohen.

Yeas 6

Nays 17

Motion to divide the question failed.

Ordered to third reading.

Recess.

Senator Delahunty in the Chair.

SENATOR BASS: Mr. President, I am proud and pleased today to have the privilege as Chairman of the newly created Joint Legislative Ethics Committee to submit to the Senate copies of the proposed Ethics guidelines that have been developed by this committee. As the committee report indicates, which is currently being distributed by the Senate Clerk, this committee took its job rather seriously. It met in session every Wednesday, at least 15 times, for roughly two hours. In the beginning of our process we held two public hearings, one during the day and one in the evening so that we could get as much public input as possible. After we had come up with a draft version, we then held two more public hearings, one during the day and one in the evening. We held information sessions yesterday. We participated in the House Education day, and the result of that effort we have before us today. Now the committee as a result of its meetings that it had yesterday, had a short meeting and determined that an amendment should be made to section three, subsection two, which is listed in the committee report. As a result of further discussions that the committee has had since that time, namely today, the committee has decided that it wishes to

work further on this specific section. So under the provisions of RSA 14:B subsection two, which is the committee's authority to issue guidelines subject to repeal by both houses of the legislature within three legislative days after such submission. As Chairman of the committee, I would like to move at this time, that subsection two on page four of the guidelines as were distributed to you and which has been circled in pencil, be stricken. I have talked to the House Leadership and they have agreed that this would be a good idea. It is the committee's intention to further work on the language contained here so that it is understandable and easier for legislators to understand, deal with and more realistically, sensitive to what the ultimate objective is, a financial disclosure in general. I would urge the Senate to support my motion to strike this particular paragraph at this time.

Revised 01/8/92

## **GUIDELINES PROPOSED TO THE LEGISLATIVE ETHICS COMMITTEE**

### **ETHICS: GENERAL OUTLINE**

- I) Principles of Public Service
- II) Definitions
- III) Financial Disclosure Form
- IV) Prohibited Activities
- V) Conflict of Interest Procedure

#### **I PRINCIPLES OF PUBLIC SERVICE**

##### **1) PUBLIC OFFICE AS A PUBLIC TRUST**

Legislators should treat their office as a public trust, only using the powers and resources of public office to advance public interests, and not to attain personal benefits or pursue any other private interest incompatible with the public good.

##### **2) PRINCIPLE OF INDEPENDENT OBJECTIVE JUDGMENT**

Legislators should employ independent objective judgment in performing their duties, deciding all matters on the merits free from conflicts of interest and both real and apparent improper influences.

##### **3) PRINCIPLE OF ACCOUNTABILITY**

Legislators should assure that government is conducted openly, equitably and honorably in a manner that permits the citizenry to make informed judgments and hold government officials accountable.

## II DEFINITIONS

1) Conflict of Interest is the condition in which a legislator has a financial interest in any official activity.

2) Immediate Family includes a spouse, guardian, parent, sibling, child or dependent.

3) Financial Interest is a reasonably foreseeable material financial effect, distinguished from its effect on the public generally, on the legislator or the legislator's immediate family.

4) Legislation is a bill, resolution or constitutional amendment.

5) Official Activities are the conduct of activities which relate to official responsibilities including the introduction of legislation, testifying before any legislative committee or state agency, voting in committee or in house or senate session or otherwise participating in, influencing, or attempting to influence any decision of the legislature, county delegation or any state agency.

6) Anything of Value includes but is not limited to the following:

a) A pecuniary item, including money, or a bank bill or note.

b) A promissory note, bill of exchange, order, draft, warrant, check, or bond given for the payment of money.

c) A contract, agreement, promise, or other obligation for an advance, conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge, or transfer of money.

d) A stock, bond, note, or other investment interest in an entity.

e) A receipt given for the payment of money or other property.

f) A cause of action.

g) A gift, tangible good, chattel, or an interest in a gift, tangible good, or chattel.

h) A loan or forgiveness of indebtedness.

i) A work of art, antique, or collectible.

j) An automobile or other means of personal transportation.

k) Real property or an interest in real property, including title to realty, a fee simple or partial interest, present or future, contingent or vested within realty, a leasehold interest, or other beneficial interest in realty.

l) A promise of employment or continued employment.

m) A rebate or discount in the price of anything of value unless the rebate or discount is made in the ordinary course of business to a member of the public without regard to that person's status as a public official or public employee, or the sale or trade of something for reasonable compensation that would ordinarily not be available to a member of the public.

### III LEGISLATOR'S FINANCIAL DISCLOSURE FORM

Every representative and senator elect, and officer of the House and Senate, shall file with the Secretary of State the following financial disclosure form on or before January 15 of each year for the preceding calendar year.

1. Identify the name, address, and type of any professional, business, or other organization (including any unit of government) in which the undersigned is or was an officer, director, associate, partner, proprietor, or employee, or served in any advisory capacity, and from which any income (including retirement benefits) in excess of \$10,000 was derived during the preceding calendar year.

### IV PROHIBITED ACTIVITIES

1) Legislators shall not solicit, accept, or agree to accept anything of value from another for himself or another person, if he receives such thing of value:

a) Knowing or believing the other's purpose to be the influencing of his action, decision, opinion, recommendation, or other official activity.

b) Knowing or believing that the giver is or is likely to become subject to or interested in any matter or action pending before or contemplated by himself or another member of the legislature.

c) In return for advice or other assistance relating to a legislator's official activities.

d) In return for introducing legislation, testifying before any legislative committee or state agency, voting in committee or in House or Senate session, or otherwise participating in, influencing, or attempting to influence any decision of the legislature, county delegation or any state agency.

e) In return for his endorsement, nomination, appointment, approval or disapproval of any person for a position as, or advancement of a public servant.

f) In return for having given a decision, opinion, recommendation, nomination, vote, or other official activity.

2) In dealing with state agencies, legislators shall not:

a) Provide information about a state agency which the legislator has obtained confidentially in the course of his official activities.

b) Reveal information about state agency operations or decisions which the legislator would not reveal to any member of the general public requesting the information.

c) Threaten a state agency or its employees with reprisals or promised inducements of any kind to influence agency decisions so as to obtain special personal benefits for the legislator, his immediate family, or for certain constituents which would not be available to others under similar conditions.

d) Conduct private negotiations with a state agency in an attempt to obtain a decision on a pending matter which would result in special personal benefit to the legislator, to his immediate family, or to certain constituents which would not be available to others under similar conditions.

3) Legislators shall not use their public position or office to obtain anything of value for the private benefit of the legislator or his immediate family.

4) Legislators shall not use state-provided services or facilities for private gain.

5) Legislators shall not become involved in any official activity without complying with the conflict of interest procedure set forth in this document.

6) Nothing in this section on prohibited activities should be construed to prohibit the following:

a) The giving or receiving of campaign contributions made for the purpose of defraying the costs of a political campaign.

b) Assistance to constituents in their dealings with state agencies.

c) Advocacy of a particular outcome on matters pending before a state agency when the legislator believes such a decision would benefit the general public or his or her constituents generally.

d) Submission by a legislator of recommendations or references on behalf of a candidate for state employment when the legislator believes the candidate is qualified to be a suitable public employee.

e) Acceptance of awards, prizes or other honors of a minimal value.

f) Acceptance of anything of value the receipt of which would otherwise be a violation of this section where the value is less than \$250.00 in aggregate from any single source during any calendar year.

## V CONFLICT OF INTEREST PROCEDURE

1) When a legislator becomes aware that a conflict of interest exists or may exist, he shall proceed in accordance with either paragraph a or b:

a) Declare that a conflict of interest exists and state that the legislator will not participate in any official activity associated with the issue as long as the conflict exists.

b) Declare that a conflict of interest exists or may exist and that the legislator intends to participate in the official activity and will provide a description of the conflict of interest including:

- \* names of all entities, both public and private, which might be affected.
- \* the nature of any benefit which may accrue to the legislator.
- \* the nature of any financial interest in the issue.
- \* the nature of any relationship which existed, exists or may exist between the legislator and any person or entity which might be affected.
- \* such additional information as may be required to permit clear public awareness and understanding of the nature and extent of the conflict.

2) The declaration required in paragraphs a and b of this procedure shall be publicly announced prior to the legislator's initial participation in the official activity. The information required in paragraph b shall be filed with the clerk of the member's respective body within twenty four hours of the time of the official activity and be made available for public inspection during normal business hours.

## ADVISORIES

1991-1, December 23, 1991

The committee will not consider complaints received alleging violations of the ethics guidelines if the alleged violation occurred prior to the establishment of the guidelines.

1991-2, December 23, 1991

The committee recognizes that legislators and officers may require a period of time to review and become familiar with the Ethics Guidelines. Accordingly, the Committee encourages legislators and officers to review and become familiar with the Guidelines, and if any violations are noted, to take action to promptly and satisfactorily remedy them.

1991-3, December 23, 1991

The Financial Disclosure Form required under Section III will not be due for the first time until January 15, 1993 for the previous calendar year.

SENATOR HOUGH: Charlie, it is fine that you want to continue to work on this, but what really is the issue? Name, address and type of business, the other side had an ownership interest in it. What are you getting at, what is bothersome here?

SENATOR BASS: Okay, the concept of ownership interest of course includes ownership of stock in a publicly traded corporation. The

committee in its deliberations is trying to balance an individual's right to privacy and the public's right to know whether or not the motivating factors involved in voting are in the public's best interest. The committee decided that an asset with a value of \$10,000 or more, excluding for the moment from the discussion the liability issue which is just as important, but the asset question, the \$10,000 was reasonable threshold, because it was the same threshold that was used in chapter 664 which is the financial disclosure information which is required for declaration of candidacy. The problem is, that the individual's financial situations are considerably more complex and I think that there was an effort on the part of many individuals, especially leadership, not to interfere with the committee's procedures. We were advised over the last couple of days that a lot of holdings and so forth, and the question of portfolios and holdings are very complex questions. For example, how do you deal with a trust fund or how do you list mutual fund holdings and so forth or assets in New Hampshire's savings bank, which there may be a huge asset there, but has no value and so forth? The committee feels very flexible about its willingness to deal with members of the legislature and simply wanted to study this particular question a little bit more and perhaps refine it better so that it reflects better what our whole objective is. It is not a big issue in other words, for us. It is a question of we didn't feel, we don't feel any regret about this motion. We feel it is good for the process and we look forward to working on this during January, coming back with another version in earlier February. It does not by the way, in any way, hinder the proper implementation of the remainder of the ethics guidelines.

SENATOR HOUGH: That is exactly the area of which my concern was. I don't and nor have I, ever owned stock in Public Service of New Hampshire. But had I, that might be warranted to disclosure, on the other hand, I might have \$10,000 in a mutual fund that had a subsequent piece in, and I might not even be aware of that. But it is that area that you are trying to fine tune?

SENATOR BASS: There are a number of issues, Senator Hough. Please, if I may answer the question. I think the primary one is the relationship between the ownership of the asset and the official activity. The first question, is whether or not asset ownership that has no relationship whatsoever to one's official business is really required, which the committee by the way has discussed in great detail. Whether or not this very simple sentence here really reflects something that is readily implemental and there is some question about that. It being some, to be blunt about it, it really is more of a detail in these guidelines, rather than a primary part. We really wanted to take it out and study it a little bit further. It doesn't repre-



sent any big tidal wave of objection that was raised. It was just that the committee has been studying these questions so deeply, it wants to create guidelines that are fair and accurate and this just doesn't quite reach that standard.

SENATOR HOUGH: That is the difference between two and one? I mean one is clearly a proprietary interest in a business as opposed to stock ownership which you would have no control of in number two? I mean that is the difference between those two sections?

SENATOR BASS: Yes. The Chair would like to welcome Senator Hough's input if you wish to give us your feelings about these guidelines.

SENATOR DISNARD: As one of the other members on this committee, I urge strong support. I won't repeat what Senator Bass said in terms of the number of hearings, the number of meetings, the number of invitations to Senators to attend. We tried to address, we the committee, every concern that was expressed by the Senators.

SENATOR HOLLINGWORTH: Very briefly, I want to commend the committee and particularly, Senator Bass for his hard work on this piece of legislation. I had the pleasure of sitting in occasionally and I can tell you that there was a very fair and open discussion and I applaud them. I think that they have done a superb job.

Senator Colantuono has moved the question.

Adopted.

Committee amendment adopted.

SENATOR BASS: I would recommend that the presiding officer, that you go on with further business at this time. The Clerk of the Senate, will message the House and the House can take the matter up if it chooses to do so at its session tomorrow, Tuesday or Wednesday of next week.

Recess.

President Dupont in the Chair.

## ANNOUNCEMENTS

Senator Russman excused for the day.

SENATOR HUMPHREY (Rule #44): I think that if we could put partisanship aside, if that is humanly possible. I am not sure it is, after what we just saw here. I do think it's appropriate in that event to acknowledge the honor paid to the state of New Hampshire whenever the Vice President of the United States visits with our citizens as the occurred occupant of that state is doing today and tomorrow.

So as one citizen of the state, I want, in a public place, to welcome the Vice President and commend him for the fine job which I believe he is doing and to add as a postscript for the information of my colleagues, the note that there has been a very comprehensive and at long last, objective series of articles this week in the Washington Post, I am told, I mean I never read that magazine, but I am told this even by its reporter who is here somewhere today, which is quite complimentary to the Vice President and the performance of his job. So as one citizen of the state, I welcome him and I wish Dan Quayle and his family a year of good health and prosperity. I thank the Chair.

SENATOR BLAISDELL (Rule #44): My comments are brief, Mr. President. I certainly agree with Senator Humphrey. I wish Dan Quayle, the Vice President of the United States, a nice trip to New Hampshire. I would like to remind the Senate that we should also be praying for the President of the United States. He is in Tokyo and he was very ill this morning. God forbid if anything ever happened to him. Thank you.

SENATOR DELAHUNTY (Rule #44): I just want to take this opportunity to applaud and commend our Governor for his very upbeat message that I think he presented to us this afternoon. It is very obvious to me as it should be to all of you, that he is certainly aware of both of our problems and our opportunities that lie ahead and I think that he addressed those in a very positive manner. I want you to know that I certainly look forward to working with the Governor in the Senate, to address those opportunities and I would hope that we would all get behind him to overcome our problems and to carry forth and to stimulate the much needed economy and business climate and the infrastructure of the state to provide jobs and opportunities for our residents. I think that he did a great job. Thank you.

SENATOR DISNARD (Rule #44): My fellow Senators, last year at this time we faced a possible \$200,000,000 deficit for the biennium. Working together we fashioned a budget bill, supported 20 - 4 in this chamber, which tried to hold the line on business taxes, property taxes and maintain state services. Later when revenue estimates again fell, we supported in a special session, the continued access of federal funds which would help us balance our budget. I stand before you again ready to cooperate with my membership to find solutions in these difficult times; however, occasionally, this spirit of cooperation is affected by a voice, the Governor of this state who's colleagues took credit when the sun shown, continues to engage in unstatesmanship-like, and frankly, juvenile statements. He has recently gone so far as to blame the recession on a Democratic candi-

date for President. My colleagues, the fact that a sitting Governor, father of our New Hampshire depression, father of the Cabletron lawsuit, the Claremont lawsuit, father of the assault on our schools, our young and our elderly, would make such a statement, is very offensive and irresponsible. The Governor reaches out his hand when he needs our hard votes on medicaid, the budget for example, then he forgets that it's statesmanship and compromise that governs. Look at Massachusetts and see innovative ideas such as output measurement of an agency. I see no innovations in New Hampshire. I look to states such as Florida and Kentucky, who have a stable and economic estimate of revenues. The Governor shuns the idea here. I only see states making their adjustments and balancing budgets in a bipartisan knowledge that in these difficult times, compromise is necessary, but in New Hampshire, the Governor blames candidates for office that are only in this state for two to three months for our recession which started the day he took office. Today, your Governor asked for over \$50,000,000 in spending, yet three months ago, he requested cuts of \$113,000,000. I suppose the Governor will call on us to find these funds. When I call on the Governor, my colleagues should call on the Governor, to begin to run this state like an executive, not like a politician. Should he make that change, I will be willing to stand with him during these tough times. Should he not make these changes, then I ask you to join with me and possibly Senator Dupont and others, to fill the void yet again. Thank you very much.

**PRESIDENT DUPONT:** If I could have the members attention for one more minute before we leave the chamber today, I don't have a great deal to say, but there are just a couple of remarks that I thought would be appropriate, given how the day started and how it's ending. It certainly, although we have some breathing room because of the actions that this body, in this chamber, a couple of months ago. I think that we all still need to recognize the urgency of the budgetary problems that are going to face our state. I also, I guess, hope that as we move forward from this point that the actions of this body which I think demonstrated to both the Governor and the House, the urgency of the issues that relate to the recovery of our economy still are the priority of this body. I think both the House and the Governor got a dose of reality last session when we moved the economic development issues to the forefront. You all participated in that and I think that you ought to be commended for the way that you all came together as a body to try to put in place some things that hopefully, will help solve some of the economic woes that our state faced at the time, still faces today, and unfortunately, will continue to face for some extended time to come.

## RESOLUTION

Senator Delahunty moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that the bills ordered to third reading be read a third time by this resolution, all titles be the same as adopted and that they be passed at the present time; and that when we adjourn, we adjourn to the Call of the Chair.

Adopted.

### Third Reading and Final Passage

**HB 1000**, establishing a study committee on certain issues regarding the next constitutional convention and authorizing a special election for electing Concord charter commission members.

## RESOLUTION

Senator Delahunty moved that the business of the day being completed, that the Senate be in recess for the purpose of receiving House messages and Enrolled bills reports and enrolled bills amendments, and when we adjourn we adjourn to the Call of the Chair.

Adopted.

Recess.

Out of recess.

## REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House Bill:

**HB 1000**, establishing a study committee on certain issues regarding the next constitutional convention and authorizing a special election for electing Concord charter commission members.

Adjournment.

*February 4, 1992*

The Senate met at 1:00 p.m.

A quorum was present.

The prayer was offered by the Rev. Dawn Berry, Guest Chaplain.

*Eternal God, as we pause in remembrance of Milo Cheney we give you thanks for all that he was by his nature and your grace. We thank you for his 15 years of service as Sergeant-at-Arms. Trusting in your eternal care, we commend him to your love in this*

*moment of silence. In your wisdom, God of freedom, you created a world where choices abound and you have given us the responsibility for making choices. Breathe your Spirit of discernment among these Senators now gathered for service. Guide their decision making that their choices may create a framework for promoting what is essential and just for the welfare of all people living in our Granite State. Bless these Senators gathered that they may be a blessing to others.* Amen.

Senator Podles led the Pledge of Allegiance.

## INTRODUCTION OF GUESTS

### HOUSE MESSAGE

#### SENATE CONCURS WITH HOUSE AMENDMENTS

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

**SB 120-FN-A**, establishing a sunset committee and restoring the sunset review process and making an appropriation therefor.

Senator Currier moved concurrence.

Adopted.

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

**SB 60-A**, creating a task force to study the Laconia - I-93 connector highway.

Senator Nelson moved concurrence.

Adopted.

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

**SB 27-FN**, relative to extended terms of imprisonment for assault crimes where the victim is a law enforcement officer.

Senator Podles moved concurrence.

Adopted.

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

**SB 16-FN**, relative to the board of dental examiners.

Senator Currier moved concurrence.

Adopted.

### **SENATE REFUSES TO CONCUR WITH HOUSE AMENDMENTS**

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

**SB 107-FN**, relative to tenants' security deposits.

Senator Bass moved nonconcurrence.

Adopted.

### **SENATE REFUSES TO CONCUR WITH HOUSE AMENDMENTS**

### **REQUEST COMMITTEE OF CONFERENCE**

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

**SB 62-FN**, relative to licensure of athletic trainers.

Senator Currier moved nonconcurrence, and request a Committee of Conference.

Adopted.

The President on the part of the Senate, appointed as members of said Committee of Conference:

Senators: Currier, Fraser and Blaisdell.

### **HOUSE NONCONCURS**

The House of Representatives refuses to concur with the Senate in the passage of the following entitled Bill sent down from the Senate:

**SB 213-FN-A**, relative to the distribution of meals and rooms tax revenue.

The House of Representatives refuses to concur with the Senate in the passage of the following entitled Bills and Resolutions sent down from the Senate:

**SB 81**, relative to damages for wrongful death.

**SB 154**, relative to the jurisdiction of state police employees.

**SB 186-FN**, establishing a committee to study household hazardous waste.

The House of Representatives refuses to concur with the Senate in the passage of the following entitled Bills and Resolutions sent down from the Senate:

**SB 18-FN-A**, relative to the conservation corps program and making an appropriation therefor.

**SB 21**, establishing a commission to study and recommend the elimination of state-mandated programs.

**SB 76**, relative to the age requirement for retirement communities.

**SB 156-FN-A**, establishing a committee to study the SAU structure within the state of New Hampshire and making an appropriation therefor.

**SB 159-FN**, relative to posting of public documents in licensed health facilities and health care facilities.

**SB 162-A**, relative to rebuilding, modernizing, and maintaining rail properties and making an appropriation for the Conway branch line.

**SB 192-FN-A**, relative to the office of chief medical examiner.

**SB 196-FN**, relative to administrative revocation of motor vehicle licenses of persons under age 21.

**SB 205-FN**, establishing a committee to study the enforcement of RSA 205-A.

**SCR 2**, urging the Federal Energy Regulatory Commission to deny a rate increase for Public Service Company of New Hampshire.

### HOUSE SENT TO INTERIM STUDY

The House of Representatives has referred for Interim Study the following Bill sent down from the Senate:

**SB 184-FN**, relative to voter registration.

Recess.

Out of recess.

SENATOR HOUGH: If you would look at, I believe, the top page that you have, on the left where it refers to rule #12 and #42 and on the right of the same page, you will find the new proposed rule #12

and #42. If you look at rule #42 on the left, you will see the underline words 'no member shall vote on any question in which he is directly interested'. That will be replaced by a new #42 on the right, which will replace it in saying 'in all instances every member shall act in conformance with the newly adopted ethic guidelines and opinions of the New Hampshire General Court.' You adopted the guidelines in the last session that we met. To bring our rules into conformity with the guidelines that we adopted, we now reference that the guidelines as opposed to the specifics of the old rule. Then if you look above, that you will see 'no member shall be required to vote on any question where he was not present when the question was put'. That language we still need, we had it in the past, and we are adding it on to #12 because we are taking that out of the old #42 that we are eliminating. In effect, the only change of significance is the guidelines now supercede the previous rule on conflict on interest. The second page you will see that the reference in rule #42 which had been made to the committee on Finance, also include "or the committee on Capital Budget". Through the balance of the rules where it says Finance, it will also include the phrase "or the committee on Capital Budget". That will eliminate some confusion as to where bills would go in the past. At the bottom you will see that any bill which has been referred to another committee and favorably been acted upon by the Senate, which has an economic impact on the state, may be referred to the committee on Economic Development for review. The committee on Economic Development may hold a further public hearing at the direction of the committee. This is a proposed new rule change that I think reaffirms the position of this body in this legislature, this biennium, where we have seized the initiative in light of the downturn in the economy in the state of New Hampshire and you have shown in a bipartisan way that we will take the initiative and work very diligently and successfully in structuring policy positions in legislation that will help the greater economic development of the state of New Hampshire both public and private. This gives this body and its Economic Development committee the opportunity to recognize all legislation and review it that may have plus or minus impact on the economic development of our state. We feel that it is very important that these people also be able to review legislation that will be established by policy committees. It would not necessarily erode the policy committees, but it would provide them with greater expertise and enhancement in their deliberations in this position.



## SENATE RULES

## Amendment to Senate Rules

12. When the nays and yeas have been moved by a member and duly seconded by another member, each member present shall declare his assent or dissent to the question, unless for special reason he be excused by the Senate. The names of the persons so making the motion and the second shall be recorded in the Journal. A member who is to be absent when the yeas and nays are required may pair his vote with another member, to be present or also to be absent, who intends to vote on the opposite side of the question. Pairs shall be permitted only if the yeas and nays are taken on such question. Both members shall file such pair in writing with the Clerk before the question is put. In all cases of pairing, the vote of neither member shall be counted in determining the result of the roll call; but the Clerk shall announce all pairs and enter them in the Journal. The President shall determine the order to the roll call. No member shall be required to vote in any case where he was not present when the question was put.

24. Every bill and joint resolution appropriating money, which has been referred to another committee and favorably accepted by the Senate, shall be committed to the Committee on Finance **or the Committee on Capital Budget** for review. If any such bills have been referred jointly to the Committee on Finance **or the Committee on Capital Budget** and another standing committee, the Committee on Finance **or the Committee on Capital Budget** may report separately and a further public hearing may be held at the discretion of the Committee on Finance **or the Committee on Capital Budget**. All bills appropriating money, which are referred to the Committee on Finance **or the Committee on Capital Budget** may have only one hearing. **Any bill which has been referred to another committee and favorably accepted by the Senate, which has an economic impact on the state may be referred to the Committee on Economic Development for review. The Committee on Economic Development may hold a further public hearing at the discretion of the Committee.**

Adopted.

42. No member shall vote on any question in which he is directly interested; **nor shall he be required to vote in any case where he was not present when the question was put**; nor sit upon any committee when he is directly interested in the question under consideration. In case of such interest of a member of a committee, the fact shall be reported to the Senate and another person may be substituted on that question in his place.

Adopted.

Senator Heath in opposition to rule change.

### RULES OF THE SENATE

1. Determination of quorum; correction of Journal.
2. Members, decorum of.
3. Members, conduct when speaking.
4. Members not to speak more than twice.
5. President shall recognize whom.
6. Questions of order; appeal.
7. Member, absenting himself.
8. Motions, order of preference.
9. Questions postponed indefinitely not acted upon in same bien-nium.
10. Questions, when divided.
11. Objections to reading paper, how determined.
12. Roll-Call, everyone must vote.
13. Galleries, clearing of.
14. Reconsideration, motion for.
15. Petitions, introduction of.
16. Bills; shall be numbered and expressed clearly.
17. Bills, introduction of.
- 17-A (a) Bills, deadlines for drafting.
- 17-b Bills, deadlines for information.
- 17-c Final deadline.
18. Resolutions to be treated as bills.
19. Bills shall have three readings; progress of; time for second and third readings.
20. Bills, printing and distribution.
21. Bills amended only on second reading; filing of amendments.
22. Public hearings to be held and advertised.
23. Amended bills, printed distributed and disposed of.
24. Appropriating money, to whom referred.
25. President to sign bills, etc.
26. Committees, appointment of.
27. Standing Committees.

28. Messages sent to House.
29. Messages, when received.
31. Visitors to Senate.
30. Voting; division of Senate.
32. Hours of meeting.
33. Rules of Senate, how suspended.
34. Rules of Senate, how rescinded.
35. Committee of the whole.
36. President may name member to chair.
37. Senate staff; composition and duties.
38. Senate staff; days of employment.
39. Committees, reports and meetings.
40. Appeal, presiding officer ruling.
41. Motions, no substitution under color of amendment.
42. Conflict of interest.
43. Committee of Conference reports
44. Personal privilege.
45. Requisition Approval Required.
46. Fiscal notes, requirements.

### **SB 311E RULES**

1. The President, having taken the chair, shall determine a quorum to be present. Any erroneous entry in the daily journal shall be corrected no later than the third succeeding legislative day, and the permanent journal corrected one week after the permanent journal copy is placed in the hands of the Senate.
2. No member shall hold conversation with another while a member is speaking in debate.
3. Every member, wishing to speak, shall address the President and when he has finished shall, if having risen to speak, then sit down.
4. No member shall speak more than twice on the same question on the same day without leave of the Senate.
5. More than one member rising to speak at the same time, the President shall decide who shall speak first.
6. If any member transgresses the rules of the Senate, the President shall, or any member may, call him to order; in which case the member so called to order shall immediately cease and desist, and the Senate, if appealed to, shall decide the case. But if there is no appeal, the decision of the President shall be conclusive.
7. No member shall absent himself without permission from the Senate.

8. When any question is under debate, no motion shall be received but first, to adjourn; second, to lay upon the table; third, for the previous question; fourth, to postpone to a certain day; fifth, to commit; sixth, to amend; and seventh, to postpone indefinitely; which several motions shall have precedence in the order in which they are so arranged. Motions to adjourn, to lay upon the table, for the previous question, and to take from the table shall be decided without debate. Motions to postpone to a certain day shall be debatable both as to time and subject matter. No motion to postpone indefinitely, to postpone to a certain day, or to commit, being decided, shall be in order at the same stage of the bill or resolution, until after adjournment.

9. A question which is postponed indefinitely shall not be acted upon during the biennium except whenever two-thirds of the whole number of elected Senators shall on division taken, vote in favor thereof. Any bill which is indefinitely postponed shall not be reintroduced under cover of an amendment to the general appropriations (budget) bill. No motion to suspend this rule shall be permitted.

10. Any member may call for a division of the question when the sense will admit it. Unless otherwise specifically provided for, a majority of those present and voting shall be required to pass any vote.

11. When the reading of a paper or document is objected to by a member, the question shall be determined by a vote of the Senate; and without debate.

12. When the nays and yeas have been moved by a member and duly seconded by another member; each member present shall declare his assent or dissent to the question, unless for special reason he be excused by the Senate. The names of the persons so making the motion and the second shall be recorded in the Journal. A member who is to be absent when the yeas and nays are required may pair his vote with another member, to be present or also to be absent, who intends to vote on the opposite side of the question. Pairs shall be permitted only if the yeas and nays are taken on such question. Both members shall file such pair in writing with the Clerk before the question is put. In all cases of pairing, the vote of neither member shall be counted in determining the result of the roll call; but the Clerk shall announce all pairs and enter them in the Journal. The President shall determine the order of the roll call. No member shall be required to vote in any case where he was not present when the question was put.

13. In case of any disturbance or disorderly conduct in the gallery, the President shall have the power to order the same to be cleared. The Chairman of the Committee of the Whole may restrict attendance to the duly elected Senators.

14. No vote shall be reconsidered, unless the motion for reconsideration be made by a member who voted with the prevailing side, nor unless the notice of such motion be given to the Senate in open session prior to adjournment on the same day on which the vote as passed, or on the next day on which the Senate shall be in session within one half hour after the convening of the early session, and any such notice of reconsideration shall be effective for three legislative days only and thereafter shall be null and void.

14 (a) Reconsideration of any bills subject to a transfer date established by joint rules must be acted on or before the joint rule deadline, and thereafter shall be null and void.

15. Before any petition shall be received and read, a brief statement of the contents thereof shall be made by the member introducing the same.

16. All petitions, memorials and other papers addressed to the Senate and all bills and resolutions to be introduced in the Senate, shall be endorsed with the name of the Senator presenting them, and with the subject matter of the same. Every bill shall be marked on the first page "Senate Bill" and numbered serially; every joint resolution shall be marked "Senate Joint Resolution" and numbered serially; every concurrent resolution proposing a constitutional amendment shall be marked "Concurrent Resolution Proposing a Constitutional Amendment" and numbered serially; and every other concurrent resolution shall be marked "Senate Concurrent Resolution" and numbered serially, as each bill or resolution is introduced into the Senate.

17. All petitions, memorials and other papers addressed to the Senate and all bills and resolutions to be introduced into the Senate shall be delivered or caused to be delivered to the Office of Legislative Services, which in turn will submit it to the sponsor for his signature, and then to the Clerk by Legislative Services. If requested by the sponsor, a proposed bill, resolution or petition shall not be made public, except by the sponsor, until signed by the sponsor. During any adjournment the President may receive bills and resolutions for printing and for reference to committee, provided that no bill shall have a public hearing until it is formally introduced into the Senate printed and available for distribution. The President shall take up all bills and resolutions for introduction at the early session.

17-A (a) No request by a member of the Senate for drafting a bill or a joint resolution, other than the general appropriations (budget) bill or the capital budget bill, shall be accepted by Legislative Services for processing unless the subject matter of the legislation has been filed with Legislative Services no later than **Friday October 4, 1991**. (old date Thurs. Dec. 12, 1991.)

(b) The Office of Legislative Services shall not draft a Senate bill or joint resolution, other than the general appropriations (budget) bill or the capital budget bill, unless the complete information necessary for drafting such a bill or joint resolution is submitted to Legislative Services not later than 5:00 p.m. on Friday, November 15, 1991. (old date Fri. Dec. 28, 1991.)

(c) **Every Senate bill and joint resolution, other than the general appropriations (budget) bill or the capital budget bill, must be signed off in Legislative Services by 5:00 p.m., on Friday, December 6, 1991.** (old date Wed. Jan. 9, 1991.)

(d) Notwithstanding the provisions of 17 (a), (b), and (c), a Senate bill, Senate joint resolutions, or Senate concurrent resolution may be accepted by Legislative Services for drafting and introduced into the Senate at any time prior to the deadline established by Joint Rules for the transfer of bills out of the first body if approved by either a majority of the Senate Rules Committee or a two-thirds vote on the floor.

18. All resolutions which may require the signature of the Governor shall be treated in the same manner as bills.

19. Every bill shall have three readings in the Senate previous to its passage. The first and second readings shall be by title only which may be accomplished by a conglomerate resolution, after which the bill shall be referred by the President to the appropriate committee and shall be printed as provided in Rule 20, unless otherwise ordered by the Senate. No bill after it has been read a second time shall have a third reading until after adjournment from the early session. The time assigned for the third reading of bills and resolutions shall be in the late session unless otherwise ordered by the Senate. The orders of the day for the reading of bills shall hold for every succeeding day until disposed of.

20. After every bill shall have been read a second time, and referred by the President to the appropriate committee, the Clerk shall procure a sufficient number of copies, printed on paper of uniform size, for the use of the legislature, and cause the same to be distributed to the members, and when printed the bill shall be immediately delivered to the committee to which it shall have been referred. Bills

received from the House shall be printed at the same stage of their procedure unless they have been printed in the House and copies distributed in the Senate, in which case any amendment made by the House shall be duplicated and distributed in the Senate.

21. No amendment shall be made but upon the second reading of a bill; and all amendments to bills and resolutions shall be in writing, with the name of the Senator and the district he represents thereon. No amendment to any bill shall be proposed or allowed at any time or by any source, including a committee of conference, except it be germane. Amendments shall have been reviewed by the Office of Legislative Services for form, construction, statutory and chapter reference.

22. A hearing shall be held upon each bill referred to a committee, and notice of such hearing shall be advertised at least 5 days before hearing in the Senate Calendar.

(a) All bills in the possession of committees shall be reported out with one of the following recommendations: ought to pass, ought to pass with amendment, re-refer to committee, inexpedient to legislate, or refer for interim study. Re-refer to committee shall be a committee report only in the first-year session; refer for interim study shall be a committee report only in the second year.

(b) If a bill is reported re-refer to committee, it shall read re-refer to committee for action in the second-year session. Bills which have been re-referred to the committee on Finance shall be referred by Finance to the original committee to which it was assigned when the senate adjourned from the first session. All re-referred bills shall be reported by the committee on or before the fifth legislative day of the second-year session.

23. When a bill is reported favorably with an amendment, the report of the committee shall state the amendment, and then recite the section of the bill in full as amended. The amendment shall be printed in the calendar of the Journal on the date that the report is listed for action. If no action is taken on that day, then the amendment shall be printed on the day to which the bill has been referred. All bills reported shall be laid upon the table and shall not be finally acted upon until the following legislative day, and a list of such bills with the report thereon shall be published in the Journal for the day on which action shall be taken.

24. Every bill and joint resolution appropriating money, which has been referred to another committee and favorably accepted by the Senate, shall be committed to the Committee on Finance or the Committee on Capital Budget for review. If any such bills have been

referred jointly to the Committee on Finance or the Committee on Capital Budget and another standing committee, the Committee on Finance or the Committee on Capital Budget may report separately and a further public hearing may be held at the discretion of the Committee on Finance or the Committee on Capital Budget. All bills appropriating money, which are referred to the Committee on Finance or the Committee on Capital Budget may have only one hearing. Any bill which has been referred to another committee and favorably accepted by the Senate, which has an economic impact on the state may be referred to the Committee on Economic Development for review. The Committee on Economic Development may hold a further public hearing at the discretion of the Committee.

25. All warrants, subpoenas and other processes issued by order of the Senate shall be under the hand and seal of the President attested by the Clerk.

26. All committees of the Senate, including Senate members on committees of conference, shall consist of members of both parties as nearly equal as possible, provided that on all committees, both parties shall be represented. The President shall appoint the members of all committees, after consulting with the minority leader.

27. The standing committees of the Senate shall be as follows: The Committee on Finance, Committee on Capital Budget, Committee on Ways and Means, Committee on Banks, Committee on Economic Development, Committee on Education, Committee on Executive Departments, Committee on Environment, Committee on Insurance, Committee on Internal Affairs, Committee on Interstate Cooperation, Committee on Judiciary, Committee on Public Institutions, Health and Human Services, Committee on Public Affairs, Committee on Transportation, Committee on Wildlife and Recreation, and the Committees on Rules and Resolutions, Journal, and Enrolled Bills.

28. Messages shall be sent to the House of Representatives by the Clerk of the Senate.

29. Messages from the Governor or House of Representatives may be received at all times, except when the Senate is engaged in putting the question, in calling the yeas and nays, or in counting the ballots.

30. All questions shall be put by the President, and each member of the Senate shall signify his assent or dissent by answering yea or nay. If the President doubts, or a division is called for, the Senate shall divide. Those in the affirmative on the question shall first rise from their seats and stand until they be counted. The President shall rise and state the decision of the Senate.



31. No person except members of the executive, or members of the House of Representatives and its officers, shall be admitted to the floor of the Senate, except by the invitation of the President, or some member with his consent.

32. The Senate shall adjourn to meet on the subsequent legislative day for the early session at the time mentioned in the adjournment motion. The late session shall immediately follow the early session unless the Senate shall otherwise order.

33. No standing rule of the Senate shall be suspended unless two-thirds of the members present vote in favor thereof. This rule shall not apply to Senate Rule 9.

34. No rule shall be rescinded unless two days notice of the motion has been given and two-thirds of those present vote therefor.

35. The Senate may resolve itself into a Committee of the Whole at any time on motion made for that purpose; and in forming a Committee of the Whole, the President shall leave the chair, and appoint a chairman to preside in committee.

36. The President when performing the duties of the Chair may, at any time, name any member to perform the duties of the Chair.

37. The staff of the Senate shall be comprised of a clerk, an assistant clerk, a sergeant-at-arms, and a doorkeeper who are to be elected by the Senate, and such other personnel as the President shall appoint. The President shall define the duties of all members of the Senate staff which are not fixed by statute or otherwise ordered by the Senate.

38. Each member of the staff of the Senate shall be available on call to carry out the work of the Senate.

39. The committees shall promptly consider and report on all matters referred to them. The President may authorize such committees having a heavy load of investigation, redrafting, research or amendments to meet as needed on non-legislative days during the legislative session. The Clerk of the Senate shall prepare a list by number, title and sponsor of all Senate bills and resolutions in committee which have not been acted upon within one week before the deadline established for the transfer of bills and resolutions from the Senate to the House of Representatives, and he shall distribute this list to every member of the Senate as soon as it is prepared.

40. Any appeal from the ruling of the presiding officer shall be decided by majority vote of the members present and voting.

41. No new motion shall be admitted under color of amendment as a substitute for the motion under debate.

42. In all instances every member shall act in conformance with the duly adopted Ethical Guidelines and Opinions of the New Hampshire General Court.

43. Action on the floor of a report of the Committee on Finance or a Committee of Conference on either the general appropriations (budget) bill or the capital budget bill, shall not be taken by the Senate, until said report has been available from the Senate Clerk twenty-four hours in advance, in written form. Nongermane amendments and footnotes to such bills (except footnotes in explanation of the principal text of such bills or designating the use or restriction of any funds or portions thereof) are prohibited and shall not be allowed under any circumstances.

44. **PERSONAL PRIVILEGE:** A Senator may, as a matter of personal privilege, defend his position on a bill, his integrity, his record, or his conduct, against unfair or unwarranted criticism, or may speak of an issue which relates to his rights, privileges or conveniences as a Senator; provided, however, the matters raised under personal privilege shall not be subject to questioning, answer, or debate, by another Senator. Personal Privilege remarks may be included in the Daily Journal if requested by the Senator, and in the Permanent Journal by vote of the Senate. A Senator may speak on other matters of his choosing and in such cases may be subject to questioning and/or answer according to the Rules of the Senate.

45. No officer or employee of the Senate during the session or any adjournment thereof shall purchase or contract for the purchase, pay or promise to pay any sum of money on behalf of the Senate or issue any requisition or manifest without the approval of the Senate President.

46. If a drafting request for a bill or resolution has been filed with the office of Legislative Services requiring a fiscal note as provided in RSA 14:44-47, the substance or a draft of the proposal may be provided to the legislative budget assistant for preparation of the required fiscal note without the specific consent of the sponsor of the proposal, provided that the identity of the sponsor shall not be disclosed.

## **RESOLUTION**

### **INTRODUCTION OF HOUSE BILLS**

Senator Currier offered the following Resolution.

**RESOLVED**, that in accordance with the list in the possession of the Clerk, House Bills numbered 263 through CACR 6 shall be by this resolution read a first and second time by the therein listed titles, and referred to the therein designated committees.

**First and Second Reading and Referral**

**HB 321-FN**, relative to small employer insurance. Insurance committee.

**HB 411**, relative to discrimination in the issuance of health insurance policies and relative to access to group plans. Insurance committee.

**HB 326-FN**, relative to disciplinary hearings before the pharmacy board. Executive Departments.

**HB 446-FN**, relative to the board of registration in medicine and relative to the definition of psychologist. Executive Departments committee.

**HB 562**, extending the surgical authority of podiatrists. Public Institutions, Health and Human Services.

**HB 726-FN-A**, relative to fees charged for vital records. Public Institutions, Health and Human Services.

**HB 503**, relative to recovery of medical assistance payments. Public Institutions, Health and Human Services.

**HB 534-FN**, amending the habitual offender penalties to provide for special alternative incarceration. Judiciary committee.

**HB 675-FN**, relative to DWI penalties while operating a motor vehicle, OHRV, or boat or while transporting a child. Judiciary committee.

**HB 758-FN**, relative to the right to privacy act. Judiciary committee.

**HB 379-FN**, relative to advertising devices within highway rights-of-way. Transportation committee.

**HB 747-FN**, establishing a committee to study ways for retail liquor store operations to maximize state revenues while maintaining adequate service to the community and allowing the liquor commission to vary its liquor prices from store to store. Ways and Means committee.

**HB 714-FN**, relative to a lifesaver ID program. Executive Departments committee.

**HB 716-FN**, relative to establishing a committee to study septic-related issues. Environment committee.

**HB 338-FN**, prohibiting the detention of minors in adult correctional facilities and jails. Judiciary committee.

**HB 470**, relative to health maintenance organizations. Public Institutions, Health and Human Services.

**HB 762-FN**, to incorporate the inhabitants of the northeasterly part of Laconia into a separate town to be known as Weirs Beach, with all the privileges and immunities of other towns in this state. Public Affairs committee.

**HB 343-FN**, to define total expenditures made during a state primary election. Public Affairs committee.

**HB 422-FN**, relative to the use of excess campaign contributions by individuals who do not accept expenditure limitations. Public Affairs committee.

**HB 632-FN**, relative to administrative due process hearings concerning special education disputes and establishing a committee to study alternative methods of dispute resolution for the special education of educationally disabled students. Education committee.

**HB 263-FN**, establishing a fee structure for used oil marketers. Environment committee.

**HB 646-FN**, relative to the disposal of certain solid waste products and leaf and yard waste. Environment committee.

**HB 477-FN**, relative to public hearings, notice, and the filing of rules under the administrative procedure act. Executive Departments committee.

**HB 410-FN**, relative to alternatives to incarceration and requiring the commissioner of the department of safety to review and make legislative recommendations on the point system as it applies to habitual offenders. Judiciary committee.

**HB 526-FN**, relative to extended terms of imprisonment and transfers to the state prison. Judiciary committee.

**HB 564-FN**, enabling towns and cities to establish heritage commissions. Public Affairs committee.

**HB 778-FN**, relative to the laws against discrimination. Public Affairs committee.

**HB 504-FN**, requiring licensure of medical utilization review entities. Insurance committee.

**HB 783**, relative to motor vehicle records and DWI convictions. Judiciary committee.

**HB 1318-FN**, repealing a provision of the business corporations act concerning application for reinstatement of charters and relative to the annual reports of beverage vendors and beverage vendor importers. Executive Departments committee.

**HB 285-A**, relative to constructing regional vocational centers and making an appropriation therefor. Capital Budget committee.

**HB 469-A**, relative to improvements on route 106 and making an appropriation therefor. Capital Budget committee.

**HB 677-FN**, establishing a 2-year pilot program in Rockingham county eliminating the trial de novo system in misdemeanor cases. Judiciary committee.

**HB 1129**, designating the insurance department as the regulatory body for approval of motor vehicle warranty agreements. Insurance committee.

**HB 1138**, relative to the board of trust company incorporation's consideration of petitions for incorporation of savings banks. Banks committee.

**HB 1140**, relative to exempting New Hampshire banks from acquisitions by out-of-state banks. Banks committee.

**HB 1142**, permitting the bank commissioner to delegate duties and responsibilities. Banks committee.

**HB 1430**, relative to the disclosure of certain information and refunds relating to musical performances. Public Affairs committee.

**HB 1237**, revising statutory references to the New Hampshire Charitable Fund. Judiciary committee.

**HB 1442-L**, relative to a census of school age children. Education committee.

**HB 585-FN**, recodifying the laws relative to emergency medical services. Executive Departments committee.

**HB 1243**, revising the Patients' Bill of Rights. Public Institutions, Health and Human Services.

**HB 1328-FN**, relative to the fiscal responsibilities of the county commissioners and the county convention for capital expenditures in Rockingham county. Public Affairs committee.

**HB 1405**, relative to appeal of tax assessments to the board of tax and land appeals and the superior court. Public Affairs committee.

**HB 1119**, relative to the New Hampshire automated information system board. Executive Departments.

**HB 264-FN-A**, placing hazardous waste transporter permit application fees in the hazardous waste cleanup fund. Environment committee.

**HB 497-FN-A**, relative to an equipment challenge grant program for vocational and technical education programs. Education committee.

**HB 505-FN**, relative to the normal yield tax, the extension of the reporting deadline for the study committee on clearcutting forest

resources, the report of cut, and creating a committee to study forest protection and management. Environment committee.

**HB 740-FN**, relative to increasing political expenditure limitations for certain candidates and relative to the penalty for exceeding total expenditure limitations. Public Affairs committee.

**HB 1100-FN-L**, establishing a housing assistance trust fund. Public Affairs committee.

**HB 1053-A**, relative to state revenues and expenditures. Finance committee.

**HB 1370**, to provide rotating 4-year county commissioner terms in Rockingham county. Public Affairs committee.

**CACR 6**, relating to taxation of business income and revenue. Ways and Means committee.

Senator Currier moved adoption.

Adopted.

### COMMITTEE REPORTS

**SB 377-FN**, an act relative to penalties for mortgage brokers who fail to file annual reports. Banks committee. Ought to Pass. Senator Disnard for the committee.

SENATOR DISNARD: SB 377, this bill exempts from penalties for failure to file annual reports, persons licensed as mortgage brokers who earn no money purchasing, placing or selling first mortgage loans during the preceeding year. For the benefit of the Senate, this was passed by the Senate last year, passed by the House and was attached to a committee of conference and the main committee of conference bill did not go through completion of the process. If anyone wants I will explain the reasons, but we went all through this last year.

Adopted.

Ordered to third reading.

**SCR 10**, an act urging that the dual-chartering system for credit unions be preserved and protected. Banks committee. Inexpedient to Legislate. Senator McLane for the committee.

SENATOR MCLANE: This bill has been withdrawn at the request of the two sponsors. Apparently the very fact that the bill was put in made for the motion that the sponsor wished, sending a message to the national credit union association, and so therefor the committee voted to withdraw.

Committee report adopted.

**SCR 11**, an act encouraging the U.S. Congress to consider the economic impact of federal laws and legislation on states. Economic Development committee. Ought to Pass. Senator Fraser for the committee.

**SENATOR FRASER:** Mr. President, this is really a very straightforward resolution asking the Congress of the United States to get off the back of the states and stop mandating unfunded programs. I would like to quote Senator Podles' testimony which I think is most appropriate. In the public hearing Senator Podles, and I quote "this is to keep the heat on Congress to tell how they impact the states. The floor of federal mandates onto states is not declining, in fact, their appetite is growing despite the sinking condition of state finances. We are faced with a federal government that continues to demand that we maintain and expand services and we have little choice but to comply. This is while federal aid is reduced time after time. States cannot meet current needs, let alone initiate new programs". Mr. President, I urge the adoption of the resolution.

**SENATOR ST. JEAN:** Senator, why wasn't the President included in the first line where you say "whereas the Congress"? Why wasn't the President added, too?

**SENATOR FRASER:** Good question. I don't have an answer to it, Senator.

**SENATOR ST. JEAN:** I just thought that I would ask. Would you mind if we added the President in there so we could possibly get his attention this election year?

**SENATOR FRASER:** No, not a bit, sure.

Senator St. Jean moved to have SCR 11 an act encouraging the U.S. Congress to consider the economic impact of federal laws and legislation on states laid on the table.

Adopted.

### LAID ON THE TABLE

SCR 11 an act encouraging the U.S. Congress to consider the economic impact of federal laws and legislation on states.

SCR 11 is laid on the table.

**SB 430-FN**, an act relative to the establishment of regional offices for the vocational rehabilitation division. Education committee. Ought to Pass. Senator J. King for the committee.

**SENATOR J. KING:** SB 430 officially and legally establishes vocational rehabilitation offices. These offices have been in effect now

since the early 1930's, so they are there. They did an audit and they saw nothing in the statute that said they were allowed to have these regional offices. The Education Department has requested that we make their business legal and pass this bill. There will be no cost involved. Everything has been in the budget since the 30's. Thank you.

Adopted.

Ordered to third reading.

**SJR 1-FN**, an act requiring the department of education to develop a computer education program for public schools. Education committee. Ought to Pass. Senator Disnard for the committee.

**SENATOR DISNARD:** I wish to first call your attention to acknowledge that this is not a fiscal note bill. There was not any request for dollars to be attached to this bill. Specifically, those of you who recall that when you went to school, you had vocational subjects, machine shop, machine tool, carpentry. Health and safety guidelines, and rules, were discussed to be used in those courses. It appears that the computer type programs within the state in the state department, lack uniform guidelines. This bill specifically focuses on health and safety issues inherent in the use of computers such as certain types of syndromes people receive today for repetition in typing or repetition of certain levels using their hands or their arms. While money was originally requested, it appears from the hearing that grants will be requested by private organizations, and people volunteered to look for those grants. So therefore, I request that the bill not be passed onto fiscal. If they are unable to get these grants, the bill can be returned next year. The bill also inadvertently, from our view point, included request for local dollars. It is a permissive bill if guidelines are adopted, and a school superintendent decides to send teachers or aids or department heads to such a guideline program in the state, then they would have to, on a permissive basis, pay for the substitute, it would not be the responsibility of anybody else. That is the reason why we say that there is not any fiscal notes required. Grants will be required and we ask you to pass this bill. It should save industry in the future, dollars, because these computer operators or similar types programs would have basic education and when to do exercises, and how to relieve their problems relating to repetition.

**SENATOR COLANTUONO:** Senator Disnard, my question is, simply because I am not familiar with the legal status of a joint resolution, does this require the department to do it or does it just urge them to do it?



SENATOR DISNARD: The resolution requires, the state department had no objection.

SENATOR COLANTUONO: So the reason why your not sending the fiscals is because you believe that there are other grants available?

SENATOR DISNARD: Yes. We have minutes from the meeting that I would be happy to show you where organizations volunteered. We have their names and the organizations to look for grants.

SENATOR COLANTUONO: Okay, thank you.

SENATOR DISNARD: That doesn't mean that the grants will be forthcoming.

Adopted.

Ordered to third reading.

**SB 326-FN**, an act relative to the borrowing authority for the Lamprey solid waste district. Environment committee. Ought to Pass with Amendment. Senator W. King for the committee.

**4754L**

### **Amendment to SB 326-FN**

Amend the title of the bill by replacing it with the following:

#### **AN ACT**

relative to the Lamprey solid waste district.

Amend the bill by replacing all after the enacting clause with the following:

1 Authorization; Lamprey Cooperative. The Lamprey regional solid waste cooperative as legalized by 1979, 8:1, is authorized to borrow funds if at least 9 of the 13 member communities of the cooperative vote to extend their membership in the Lamprey regional solid waste cooperative until June 30, 1996, of up to an amount of \$500,000 for the purpose of expanding the solid waste landfill located in the city of Somersworth. Such borrowing may be authorized by a vote of the joint board of the Lamprey regional solid waste cooperative.

2 Bond Authorization. The Lamprey regional solid waste cooperative is authorized to issue municipal bonds in an amount not to exceed \$500,000 for the purposes of section 1 of this act. The term of such bonds shall not exceed 5 years. Principal and interest payments on the bonds shall be paid when due from the revenues of the cooperative. Such bonds may be authorized by a vote of the joint board of the cooperative without a vote of the member communities.

3 Effective Date. This act shall take effect July 1, 1992.

### AMENDED ANALYSIS

This bill authorizes the Lamprey solid waste cooperative to borrow up to \$500,000 to expand the solid waste landfill if at least 9 of the 13 member communities of the cooperative vote to extend their membership in the Lamprey regional solid waste cooperative until June 30, 1996. Bonds may be authorized by a vote of the joint board of the cooperative, without a vote of the member communities.

SENATOR W. KING: This bill is fairly simple, it allows the Lamprey solid waste district fund up to \$500,000 additional costs to expand the landfill.

Committee amendment adopted.

Senator Shaheen moved to have SB 326-FN an act relative to the borrowing authority for the Lamprey solid waste district laid on the table.

Adopted.

### LAIID ON THE TABLE

**SB 326-FN**, an act relative to the borrowing authority for the Lamprey solid waste district

SB 326-FN is laid on the table.

**SB 311**, an act exempting certified fire investigators from licensure under the detective agencies and securities services act and changing the date for renewal or reinstatement of private detective licenses. Executive Departments committee. Ought to Pass with Amendment. Senator Currier for the committee.

4538L

### SB 311

Amend the title of the bill by replacing it with the following:

### AN ACT

exempting certified fire investigators from licensure under the  
detective agencies and securities services act, changing  
the qualification for fire investigators and changing  
the date for renewal or reinstatement of  
private detective licenses.

Amend section 1 of the bill by replacing it with the following:

1 Certified Fire Investigators Exempted. Amend RSA 106-F:2 to read as follows:

106-F:2 Exclusions. The following are excluded from the provisions of this chapter: insurance adjusters licensed as such; consumer reporting agencies and their employees who are engaged solely in the business of assembling or evaluating consumer credit information for a consumer reporting agency as defined in RSA 359-B:3, VI; police officers **or fire investigators** of the United States and the state, county, city or town, while assigned to duty by and performing as officers of their respective law enforcement **or fire service** agencies; any unarmed security guard [employed solely to secure the premises of his employer] **who is an employee of a business which is not a security guard agency and who is employed by that business to secure its premises while so employed.**

Amend the bill by replacing all after section 2 with the following:

3 Additional Requirements for Private Detective Licenses. Amend RSA 106-F:6, VIII(d) to read as follows:

(d) Except for employees, possess:

(1) A minimum of 4 years' experience as [an investigator or] a full-time law enforcement officer with a state, county or municipal police department; or

(2) An associate of science degree or bachelor of science degree in criminal justice **or fire service** from an accredited college or university, and employment as a full-time investigator for a private detective agency for at least 2 years; or

(3) A minimum of 4 years' employment as a full-time investigator for a licensed private detective or private detective agency[.];  
**or**

(4) **A minimum of 4 years' experience as a full-time firefighter and certification by the International Association of Arson Investigators.**

4 Effective Date. This act shall take effect 60 days after its passage.

### AMENDED ANALYSIS

This bill exempts fire investigators certified by the National Association of International Investigators from the licensing requirements of detective agencies and security services.

This bill modifies the requirements that a fire investigator applicant is required to possess.

This bill also changes the date for renewal or reinstatement of private detective licenses from January 1, 1991, to December 31, 1989.

SENATOR CURRIER: The amendment is on page four of your calendar today. The bill exempts fire investigators certified by the National Association of International Investigators from the license requirements of the detective agencies and security services. The

bill modifies a requirement that a fire investigator applicant is required to possess. It also changes a date in terms of the grandfather clause with regard to renewal or reinstatement of private detective licenses from January 1, 1991 to December 31, 1989. The changing of that date will cover a number of people who had fallen through the cracks in other legislation that we passed over the last two years dealing with the same subject matter.

Committee amendment adopted.

Recess.

Out of recess.

Senator Russman offered a floor amendment.

4783L

### Floor Amendment to SB 311

Amend the title of the bill by replacing it with the following:

#### AN ACT

exempting certified fire investigators and certain towing companies from licensure under the detective agencies and securities services act, changing the qualification for fire investigators and changing the date for renewal or reinstatement of private detective licenses.

Amend section 1 of the bill by replacing it with the following:

1 Fire Investigators and Towing Companies Exempted. Amend RSA 106-F:2 to read as follows:

106-F:2 Exclusions. The following are excluded from the provisions of this chapter: insurance adjusters licensed as such; consumer reporting agencies and their employees who are engaged solely in the business of assembling or evaluating consumer credit information for a consumer reporting agency as defined in RSA 359-B:3, VI; police officers **or fire investigators** of the United States and the state, county, city or town, while assigned to duty by and performing as officers of their respective law enforcement **or fire service** agencies; any unarmed security guard [employed solely to secure the premises of his employer] **who is an employee of a business which is not a security guard agency and who is employed by that business to secure its premises while so employed; and towing or wrecking companies engaged in the repossession of vehicles.**

### AMENDED ANALYSIS

This bill exempts fire investigators and towing companies engaged in the repossession of vehicles from the licensing requirements of detective agencies and security services.

This bill modifies the requirements that a fire investigator applicant is required to possess.

This bill also changes the date for renewal or reinstatement of private detective licenses from January 1, 1991, to December 31, 1989.

SENATOR RUSSMAN: I offer a floor amendment to SB 311 that adds a line at the end of the exemptions which simply says, "and it exempts towing or wrecking companies engaged in the repossession of vehicles". What happened in this case was, a private investigator went to one of the larger banks and said you know you can't have towing companies repossess vehicles for you anymore unless they are private investigators. The bank eventually ended up firing the people who were towing their vehicles because they didn't have a private investigators license. They got legal counsel to give an opinion saying that they didn't qualify even under this law, but the bank being as nervous as they are lately, said that they couldn't do it unless you change the law. So they came to me and asked if they are simply in the business of repossessing vehicles for banks, people haven't paid for their cars, that they don't actually have to have a private investigators license. In all reality, it sounds to me, that it would have to be really bizarre that you would have to have a private investigators license anyway, to tow vehicles for a bank. I don't think that was the purpose and the intent of the law in the first instance. Hopefully, you will adopt the floor amendment so that somebody who has a towing service and a bank contacts them and asks them to go and repossess a car for them, they would be able to go and do that without having a private investigators license, which they shouldn't need in any event. So it exempts towing and wrecking companies engaged in the repossession of vehicles. There is nothing more or nothing less.

SENATOR NELSON: Senator Russman, I just wanted to understand and I didn't hear everything that you said, it's a little hard to hear over here. I wanted to know what your amendment is addressing? Is it addressing this part of the bill, section three where it says "except for employees, they must possess a minimum of four years experience"?

SENATOR RUSSMAN: No. All mine does is exempt from the provisions so that people who tow vehicles for banks don't have to have a private investigators license. That is all that it does. It doesn't require them to have any educational experience or professional

background, as long as they have a tow truck and the bank calls them and asks them to go and repossess a vehicle, that they can go and do that.

SENATOR NELSON: Let me rephrase the question. I am trying to figure out if the reason you are putting this amendment in is, is this correct, is because in section two on the amended paper it says "except for employees, you must possess a minimum of four years experience as a full time law enforcement officer with the state and county or municipal department or police, have an associates degree and have a minimum of four years employment as a full time . . ." is that the reason, because all of these qualifications are in here?

SENATOR RUSSMAN: I don't know that in all honesty, Senator Nelson. I cannot imagine that those people would have to have a four year degree and have all of this training to go and repossess a vehicle for the bank.

SENATOR NELSON: So that is the reason why you are putting this in, because of all of this in here?

SENATOR RUSSMAN: No, I am putting it in because a fellow called me and said that he got fired and he would like to be able to, in all honesty, he would like to be able to tow vehicles without a private investigators license.

SENATOR NELSON: Do you think that a person who wants to be an investigator in the state of New Hampshire needs to have all of these things?

SENATOR RUSSMAN: Personally, no. I don't think so.

SENATOR CURRIER: This amendment doesn't deal with the provisions that you are talking about, Senator. It's amending the first section of the previously amended bill. We amended it ten minutes ago.

Floor amendment adopted.

Ordered to third reading.

**SB 335-FN**, an act authorizing the board of marital mediator certification to establish and collect certification fees, establish a budget and certify certain applicants and continually appropriating a fund. Executive Departments committee. Ought to Pass. Senator Colantuono for the committee.

SENATOR COLANTUONO: Mr. President, this bill closes some loopholes in the original legislation which established a marital mediator certification process board. The original legislation didn't give them any power to have a budget or collect fees, and basically, that is

all that this bill does. There was no opposition to it. It simply gives them the authority they need to operate as a board in our state.

Referred to Finance (Rule #24).

**SB 361**, an act relative to the impact fee laws. Executive Departments committee. Ought to Pass. Senator Currier for the committee.

**SENATOR CURRIER:** Unlike previous legislation dealing with impact fees, this is dealing with impact fee laws which we passed last session in the legislature. There was some concern on the part of the number of associations and so forth dealing with an issue about a redundancy that occurred in the statute. What this bill does, is remove that redundant reference in terms of cleaning the current impact law up. It is very basic and simple.

Adopted.

Ordered to third reading.

**SB 370**, an act relative to health insurance coverage for scalp hair prostheses. Insurance committee. Ought to Pass. Senator Hollingworth for the committee.

**SENATOR HOLLINGWORTH:** The committee on Insurance moved ought to pass on SB 370 and I would like to say that if this bill is passed by this body, Senator Podles will offer an amendment which I am in total support of and I hope that you will support that amendment as well. I came to support this legislation in a very unusual way. Like many of you, I received a letter from a very young lady who told me about her experience with Alopecia and I knew nothing about Alopecia at the time. I hadn't even heard of the word nor did I know how to pronounce it. I called her on the phone and setup an appointment where I could meet her. I met this charming young lady from the Durham area. She told me of her experiences and what had happened to her. She told me that one night she was lying in bed and had started to cough and had hair in her face. She thought that she had rolled over and her hair had got in her face and she turned her pillow over and went back to sleep. In the morning when she woke up, again coughing, she looked at her bed and her bed was covered with her hair. She went into the shower and showered which caused more of the hair to fall. The shower was clogged with the loss of her hair. It was devastating, she said. She couldn't believe it. She didn't know what was happening to her. Finally, she saw a doctor and he said "you have Alopecia. There is no cure, it is a disease, we don't know what causes it. The best thing that you can do young lady is go out and buy yourself a wig and go back to work". She testified in our hearing, that it took her a month to get over the

shock. She found the insurance company was more than willing to pay for all of her psychiatric care and they were willing to send her to Mary Hitchcock and any kind of psychiatrist that they wanted. They were more than willing to pay for all of these ointments that she could rub on her head. These ointments would irritate the scalp and the hair would come in for a short while, it looked terrible as it was coming in and then it would fall out. It was impossible for her to go to work with her head looking the way it looked and yet the insurance companies were not willing to give her the one thing that she needed. The psychiatrist said the best thing you can do is to go back to work. The doctor said the best thing that you can do is get back to work. But again, when she would go to the insurance companies they would say "there is not a thing that we can do for you, we don't cover hair prosthesis". We cover prostheses for every other part of the body, should you lose your eye, we will give you a glass eye, if you should lose your leg, we will give you a leg, if you lose one of your breasts, we will give you a prosthesis for the breast. In fact, they send you to someone who makes you a brassiere that is padded so that you can go forth and do your job. In our hearing we had many, many, women who came to testify. Before the hearing, we had several other bills, so when we looked at the people there to testify, we didn't know who was there to testify for Alopecia and who was there to testify for some other piece of legislation. In the front row was a very, very attractive young lady, quite good looking. She was there when my bill came up. When she got up to testify, she said that she had been told that the insurance companies, if the loss of hair was disfigurement, they might provide a prosthesis. She, with that, took off from her head, which was a beautiful hairdo and looked quite normal, and exposed to the committee what she looked like with Alopecia. Senator Colantuono came in a little later and Senator Russman, and she showed them as well. I have to tell you that Senator Colantuono may be a very good lawyer in keeping a very straight face in court, but that day he did not keep a straight face, in fact, he could not look at Mrs. Fuller. He turned very white and he sat down in a chair. Now it was a shock to all of us. All of us realized that no one could be expecting for this women to go out and walk down the street or as one of them was a school teacher, teach a class looking like that, I mean it was an impossibility. This world is not prepared for a totally bald woman. In some cases, they do have bumps on their heads and little patches of hair, maybe here or there. It is definitely not the way that the community is going to take you as we sit here today. If I were here today as one of those women were, I am sure you would be feeling as many of us in the committee did, please put your prosthesis back on, it was more than we could tolerate. What was surprising to me was the insurance companies. I called them



and they corresponded to me in advance. In each case they said it was a terrible situation, but it's a mandate. Well, I remember we passed mandates before in this body for insurance companies. We passed a mandate for mammograms. The reason that we passed it was because it would save lives and it was going to cost less in the long run. This bill is going to do exactly that. The psychiatrist treatments are \$90 an hour; there is a slip that was given to me from the committee. One of the patients had the different treatments. They run anywhere from \$600 to \$1,200 for just these treatments that have to be continually refilled, like rogain and these other things, which still, the person who is putting this on their head is not able to go out in public. I mean it is not something that you can have, a tar substance which is one of these, on your head and still expect to go and teach a class. The insurance companies and Donna Rogers said, I have her testimony here and I hope that I can remember because I probably can't find it. But she said 'I feel very sympathetic' and it moved me, 'but it's a mandate and we just don't do mandates'. I think that everyone of the insurance companies and those were the only people that were there and said that 'we don't do mandates'. Senator Nelson made a very good point, she said to them "who pays for the insurance, is it just the employer or is it the employee as well"? The answer was "well, a lot of time they share the cost". Mary asked another point, she said "can you tell us how much this is going to cost"? The insurance company said that "they didn't know and it is a very small group of people that have this disease and we don't know what the cost is, but we will get you the information". Well, I asked Senator Nelson, did you ever get the information and she said "no". Well I can bet you that if it was going to cost a lot of money, the insurance companies would have got that information to Senator Nelson, because it wasn't going to cost a lot of money, they didn't want to be bothered to inform us of what it was going to cost us. This is going to save money and it is going to give these people who have an incurable disease, the only thing that they want. Everyone who testified said, please we just want our confidence back, we just want to be able to go back out in the street. There was a little old lady who spoke last, gray hair, cut short and very attractive. She sat down and she said "I have a prosthesis on and I am not quite as brave as Mrs. Fuller, and I am not going to remove it. I would like to ask you this one question, and I would like you to think about it. If each of you had one breast and you were wearing a prosthesis on the other side, and you each had a hair prosthesis and you had to take one off and walk down Main street, which one would you choose to take off"? I don't think any of you sitting here, if you're a woman, would want to take off your hair. I have to tell you that there are men that have this disease. There are also children. That was a point that one of the

other people talking made. The difficulty as a child to be totally bald and have to go to school like that and have other children make remarks at you and taunt you. One woman said that her mother used to sew hair on to a hat and she used to have to wear her hat all the time in school. Now this is not what we need to be doing to people who have a disease and the ultimate end, the treatment is going to cost more than the people need. The only thing that can help them is to have a prosthesis and to get on with their lives and that is exactly what they want. I hope that you will listen to this where it has been tested in other states and when it has been fought in the courts legally, it has won. These people do not want to have to go court. The reason that insurance cost so much today is because the insurance companies spend so much time in the courts litigating rather than solving the problem and taking care of the people that need assistance. I hope that you will support this legislation, again, I was impressed, extremely impressed with these citizens. We so often up here serve legislation for the lobbying groups that are out there asking us to sponsor legislation. This was a definite piece of people legislation and I hope that you will support it.

SENATOR DISNARD: Senator Hollingworth, does this mean this bill is an act, the rules are promulgated at one time . . . TAPE IN-AUDIBLE.

SENATOR HOLLINGWORTH: I am sure that the insurance companies will make conditions of how they will enact it. Right now the treatments cost upwards to \$6,000 a year. A prosthesis that we told would last anywhere from 3 to 5 years and cost about \$3,000. So you can see that it is a definite savings of money.

Adopted.

Senator Roberge in opposition to committee report on SB 370.

SENATOR PODLES: I have a floor amendment and the number is #4761L. What it does is the last two lines of numeral one says 'such coverage however shall be subject to a written recommendation by the treating physician stating that their hair prosthesis is a medical necessity'. I am doing this because the dermatologists have been concerned about this and this amendment will take care of the abuses and also it will control cost. I would hope that you would pass this amendment.

Senator Podles offered a floor amendment.

4761L

#### Floor Amendment to SB 370

Amend the bill by replacing all after the enacting clause with the following:

1 New Section; Accident and Health Insurance Coverage. Amend RSA 415 by inserting after section 18-b the following new section:

415:18-c Coverage for Scalp Hair Prostheses. Each insurer that issues or renews any policy of group or blanket accident or health insurance providing benefits for medical or hospital expenses and which also provides coverage for breast prostheses, shall provide to each group, or to the portion of each group comprised of certificate holders of such insurance who are residents of this state and whose principal place of employment is in this state, coverage for expenses for scalp hair prostheses worn for hair loss suffered as a result of alopecia or permanent loss of scalp hair due to injury. Such coverage, however, shall be subject to a written recommendation by the treating physician stating that the hair prosthesis is a medical necessity.

2 New Section; Hospital Service Corporations. Amend RSA 419 by inserting after section 5-b the following new section:

419:5-c Coverage for Scalp Hair Prostheses. Every hospital service corporation and every other similar corporation licensed under the laws of another state, which provides coverage for breast prostheses, shall provide to each group, or to the portion of each group comprised of certificate holders of such insurance who are residents of this state and whose principal place of employment is in this state, coverage for expenses for scalp hair prostheses worn for hair loss suffered as a result of alopecia or permanent loss of scalp hair due to injury. Such coverage, however, shall be subject to a written recommendation by the treating physician stating that the hair prosthesis is a medical necessity.

3 New Section; Medical Service Corporations. Amend RSA 420 by inserting after section 5-c the following new section:

420:5-d Coverage for Scalp Hair Prostheses. Every medical service corporation and every other similar corporation licensed under the laws of another state, which provides coverage for breast prostheses, shall provide to each group, or to the portion of each group comprised of certificate holders of such insurance who are residents of this state and whose principal place of employment is in this state, coverage for expenses for scalp hair prostheses worn for hair loss suffered as a result of alopecia or permanent loss of scalp hair due to injury. Such coverage, however, shall be subject to a written recommendation by the treating physician stating that the hair prosthesis is a medical necessity.

4 New Section; Nonprofit Health Service Corporations. Amend RSA 420-A by inserting after section 7-d the following new section:

420-A:7-e Coverage for Scalp Hair Prostheses. Every nonprofit health service corporation and every other similar corporation licensed under the laws of another state, which provides coverage for prostheses, shall provide to each group, or to the portion of each

group comprised of certificate holders of such insurance who are residents of this state and whose principal place of employment is in this state, coverage for expenses for scalp hair prostheses worn for hair loss suffered as a result of alopecia or permanent loss of scalp hair due to injury. Such coverage, however, shall be subject to a written recommendation by the treating physician stating that the hair prosthesis is a medical necessity.

5 New Section; Health Maintenance Organizations. Amend RSA 420-B by inserting after section 8-d the following new section:

420-B:8-e Benefits for Scalp Hair Prostheses. Benefits for scalp hair prostheses shall conform to the requirements of RSA 415:18-c. Such benefits shall not be subject to any greater deductible than any other benefits provided by the health maintenance organization. The co-insurance required by the enrolled participant shall not exceed the amount allowed under the contract for the reasonable and customary charge for the services provided. Such coverage, however, shall be subject to a written recommendation by the treating physician stating that the hair prosthesis is a medical necessity.

6 Effective Date. This act shall take effect January 1, 1993.

### AMENDED ANALYSIS

This bill requires all health insurers, hospital service corporations, medical service corporations, nonprofit health service corporations, and health maintenance organizations, which provide coverage for prostheses, to provide coverage for scalp hair prostheses worn for hair loss resulting from alopecia or permanent loss of scalp hair due to injury. Coverage is subject to a written recommendation from the treating physician stating that the prosthesis is a medical necessity.

SENATOR HEATH: Senator Podles, will your amendment cause the insurance companies who litigate, it would give them an area of litigation?

SENATOR PODLES: It would probably stop them from litigating.

SENATOR HEATH: I wonder if I can ask that same question to Senator Hollingworth?

SENATOR HOLLINGWORTH: Sorry, Senator Heath, I was not listening, could you repeat it please?

SENATOR HEATH: I asked Senator Podles and I would like a response from you as well. Do you think that Senator Podles' amendment might cause or reduce litigation by insurance companies?

SENATOR HOLLINGWORTH: I think her amendment is very good and I think that it would certainly be helpful to determine that it is a medical condition. That is exactly what the doctors are saying

that it is. It is a disease. The Medical Journal says that it is a disease and that there is a need to have coverage on the head and because of the psychological problem as well.

SENATOR W. KING: Senator Hollingworth, do you have a legal definition for the term 'medical necessity'?

SENATOR HOLLINGWORTH: I'm afraid I don't, Senator King. But I am sure that we could get one together for you if this body passes it so that we will have it ready for the House if you would like to see that added?

SENATOR W. KING: The only thing that I am concerned about is that certainly resulting from the medical condition that is necessary to have the prostheses, but the question that I have is whether or not the insurance company could decide that it is not a medical necessity by some other use of the definition?

SENATOR HOLLINGWORTH: I can understand your concern. I did call Susan Turner who is the person that I have been talking to about Alopecia and told her about the amendment and she felt that it was fine. She said that the doctors are now writing prescriptions that it is a medical necessity, that they have prosthesis and even with that the insurance companies are not recognizing it. So if a doctor is going to put that in writing then it is clear that the doctors, and they do believe that it is a medical necessity.

SENATOR NELSON: I guess I wanted to clarify one thing in terms of information. That is, that the insurance people with whom I spoke said that they would get me information concerning managed care. If I understood them correctly, this may be something that could happen and they, under a managed care plan, could determine whether they would accept this or not. So no, they didn't give me all the information. Part of the information had to do with managed care and the suggestion that at some point that might be possible. I wanted to make you aware of that, that other alternatives were being looked at to include this called managed care.

Floor amendment adopted.

Ordered to third reading.

Senator Roberge in opposition to SB 370 floor amendment.

Recess.

Senator Delahunty in the Chair.

**SB 394**, an act relative to the jurisdiction of the labor department over self-insured workers' compensation programs. Insurance committee. Ought to Pass with Amendment. Senator Hollingworth for the committee.

4708L

**Amendment to SB 394**

Amend the bill by replacing all after section 2 with the following:

3 New Paragraph; Definition Added. Amend RSA 281-A:2 by inserting after paragraph X-a the following new paragraph:

X-b. "Homogeneous" means of a similar kind or nature, or possessing similar qualities and attributes. A group or association of homogeneous employers shall mean employers who have similar trades, businesses, occupations, professions or functions.

4 Groups Added. Amend the introductory paragraph of RSA 281-A:5 to read as follows:

An employer, **or group or association of homogeneous employers** subject to this chapter shall secure compensation to employees in one of the following ways:

5 New Sections; Self-Insurance for Private Employers. Amend RSA 281-A by inserting after section 5 the following new sections:

281-A:5-a Self-Insurance for Private Employers. Any private employer as defined in RSA 281-A:2, VIII or any group or association of homogeneous employers may, subject to RSA 281-A:5, III and any rules adopted to enforce such section, self-insured for workers' compensation coverage provided that such employer or group or association of homogeneous employers shall:

I. Establish and maintain appropriate loss reserves determined in accordance with sound actuarial principles.

II. Maintain specific excess insurance.

III. Make all contracts with administrators or service companies available for inspection by the commissioner upon reasonable notice.

281-A:5-b Private Employers; Annual Financial and Actuarial Reports.

I. Every private employer as defined in RSA 281-A:2, VIII or group or association of homogeneous employers self-insuring for workers' compensation coverage under RSA 281-A:5 and 5-a, shall annually within 6 months of the end of the fiscal year or within such extension of time as the commissioner for good cause may grant, file a report with the commissioner, verified by the oath of a member of the board of trustees or by an administrative executive appointed by the board, showing its condition on the last day of the preceding fiscal year. The report shall contain a financial statement of the self-insured program, including its balance sheet and a statement of operations for the preceding year audited by an independent certified public accountant.

II. Every private employer as defined in RSA 281-A:2, VIII or group or association of homogeneous employers self-insuring for workers' compensation coverage under RSA 281-A:5 and 5-a, shall annually within 6 months of the end of the fiscal year or within such extension of time as the commissioner for good cause may grant, file with the commissioner a report prepared by an actuary who is a member of the Casualty Actuarial Society or the American Academy of Actuaries as to the actuarial soundness of the program. The report shall consist of, but shall not be limited to, the following:

(a) Adequacy of contribution rates in meeting the level of benefits required and changes, if any, needed in the contribution rates to achieve or preserve a level of funding deemed adequate to enable payment of the benefit amounts required, by each such employer or group association of homogeneous employers.

(b) A determination of appropriate loss reserves.

(c) A description and explanation of actuarial assumptions.

(d) A statement by the actuary that the report is complete and accurate and that in his opinion the techniques and assumptions used are reasonable and meet the requirements and intent of this section.

(e) Other factors or statements as may be reasonably required by the commissioner in order to determine the actuarial soundness of the plan.

281-A:5-c Jurisdiction Over Private Employer Self-Insured Programs.

I. Any private employer or group or association of homogeneous employers self-insuring for workers' compensation coverage under RSA 281-A:5 and 5-a, is not an insurance company, reciprocal insurer or other insurer under the laws of this state, and administration of any activity securing compensation to employees thereunder, shall not constitute doing an insurance business for any purposes under title XXXVII.

II. The department of labor shall have exclusive jurisdiction over any private employer or group or association of homogeneous employers self-insuring for workers' compensation coverage under RSA 281-A:5 and 5-a.

6 New Paragraphs; Jurisdiction Over Public Employer Self-Insured Programs. Amend RSA 281-A:11 by inserting after paragraph V the following new paragraphs:

VI. Any public employer self-insuring for workers' compensation coverage under this chapter is not an insurance company, reciprocal insurer or other insurer under the laws of this state, and administration of any activity of securing compensation to employees thereunder shall not constitute doing an insurance business for any purposes under title XXXVII.

VII. The department of labor shall have exclusive jurisdiction over any public employer or group or association of public employers self-insuring for workers' compensation coverage under this chapter or RSA 5-B.

7 New Subparagraph; Rulemaking Added. Amend RSA 281-A:60, I(n) to read as follows:

**(n) Establishing initial, minimum funding requirements necessary to seek authorization to self-insured under this chapter.**

[(n)] (o) Any other matter necessary to the enforcement or administration of this chapter.

8 Effective Date. This act shall take effect 60 days after its passage.

SENATOR HOLLINGWORTH: The committee on Insurance moves that SB 394 ought to pass with amendment. SB 394, the intent of the bill is to clarify and confirm that the Department of Labor has exclusive jurisdiction over the operations of self-insured workers compensation programs. It's to confirm that the conduct of these programs does not constitute doing an insurance business under the insurance statutes and regulations of the state. Third, it assumes that the private sector only, groups or associates of homogeneous employees, may qualify under this statute and regulate it to operate self-insured workers compensation programs. Four, the financial report. An actual report to be filed with the New Hampshire Department of Labor on an annual basis. Five, that the Department of Labor be authorized to adopt regulations to seek authorization for self-insured workers compensation exposure. The amendments to the bill change the word of homogeneous from homogenizes. I don't think any of us thought we were dealing with milk as Senator Disnard said. It requires that the actuary reports be filed on an annual basis rather than for three years and require that the Department of Labor be specifically authorized to adopt regulations concerning minimal funding levels. This bill had the support of the American Insurance Association, New England Telephone, PSNH, New Hampshire Automobile Dealers Association, Advisory Council on Workers Compensation, Compensation Fund of New Hampshire, the BIA, the New Hampshire Hospital Association and the New Hampshire Council on self-funded workers and the Insurance Commissioner, Commissioner of Labor and the Commissioner of the Labor Department. I think that this is an excellent piece of legislation and I hope that you can support it.

Committee amendment adopted.

Ordered to third reading.



Senators Fraser and Roberge (Rule #42).

**SB 333**, an act relative to a Piscataqua River basin council. Interstate Cooperation committee. Ought to Pass. Senator Shaheen for the committee.

**SENATOR SHAHEEN:** This bill 333 establishes council to study issues effecting the Piscataqua River which runs between Dover and the city of Portsmouth. There is also legislation in Maine right now that would establish similar council in Maine. The idea is that, hopefully, the two states would began to work together to address issues of mutual concerns affecting the Piscataqua River. You can see by looking at the bill that there are a number of . . . the House and Senate is very well represented as well as some of the local interest along the river. So I urge the body to except the bill.

Adopted.

Ordered to third reading.

**SB 318-L**, an act relative to a fire protection area within the town of Amherst. Public Affairs committee. Ought to Pass with Amendment. Senator Bass for the committee.

**4732L**

### **Amendment to SB 318**

Amend the title of the bill by replacing it with the following:

#### **AN ACT**

relative to fire protection areas within the town of Litchfield.

Amend the bill by replacing all after the enacting clause with the following:

1 Purpose. The purpose of this act is to allow fire protection areas in sections of the town of Litchfield which are served by a private water company. This will assure that owners of property in such section who receive the most direct benefit from having water available for fire protection will pay for such service.

2 Fire Protection Areas. Current and future property owners in Litchfield with a residence or other building located within 1,000 feet of an approved and operational fire hydrant shall be established as a fire protection area. Affected areas shall be verified by the Litchfield fire department. The selectmen shall tax all the property owners of the fire protection areas for the expense billed to the town of Litchfield for the water for fire protection provided to such areas by a private water utility company. The selectmen shall base this taxation for water for fire protection upon the appraised value of the

property which has been determined in accordance with RSA 75:1. The taxes for water for fire protection shall be included on the property tax warrant committed to the collector of taxes under the hands and seal of the selectmen requiring him to collect them. The additional tax shall be itemized and included on the property tax bills, and the collector of taxes shall have the same rights and remedies and be subject to the same liabilities in relation thereto as in the collection of other taxes.

3 Definition. For the purposes of this act, the phrase "water for fire protection" means all water, lines, hydrants and related utilities necessary to the transmission and availability of water in the event of fire.

4 Contingency. This act shall not take effect unless the voters in the proposed fire protection area approve the creation of the fire protection area by majority vote of those voters present and voting at a meeting called by the board of selectmen of Litchfield for that purpose or unless at an annual town meeting or any special town meeting called by the selectmen, a majority of those present and voting approve the creation of the fire protection area and authorize the selectmen to set a tax, a portion of which may be paid by the town as a whole and a portion of which may be paid by the area, as directed by town meeting, to defray the expense of fire protection. The selectmen shall have complete discretion to decide whether or not to call a meeting, to defray the expense of fire protection. The selectmen shall have complete discretion to decide whether or not to call a meeting of voters resident in the fire protection area or a meeting of the whole town to consider the issue of the creation of the fire protection area, or both or take any action relative thereto.

5 Effective Date.

I. Section 4 of this act shall take effect upon its passage.

II. The remainder of this act shall take effect as provided in section 4.

### AMENDED ANALYSIS

This bill allows the town of Litchfield to establish fire protection areas within sections of the town served by a private water company. The bill allows the town to require the property owners in such areas to bear the expense of having water available for fire protection.

SENATOR BASS: Mr. President, the sponsors of the bill testified to the affect that Amherst is no longer interested in having a fire protection area. Senator Colantuono appeared before the committee with a similar request for the town of Litchfield, so the amendment simply does the same thing in the town of Litchfield that was pro-

posed in the original bill for the town of Amherst. The committee urges your support of the amendment and the committee report of ought to pass as amended.

Committee amendment adopted.

Ordered to third reading.

**SB 321**, an act repealing an exemption for town clerks relative to voter registration. Public Affairs committee. Ought to Pass with Amendment. Senator Bass for the committee.

**4750L**

### **Amendment to SB 321**

Amend the bill by replacing section 1 with the following:

1 Application Provisions to Apply in all Cities and Towns. Amend the introductory paragraph of RSA 654:8 to read as follows:

**The provisions of this section shall apply in all cities and in all towns.** Any person who has his domicile in any town or city in this state and whose name does not appear on the checklist of said town or city may apply to the town or city clerk, **or to the supervisors of the checklist as provided in RSA 654:11**, for the purpose of having his name added thereto by filling out the form provided for in RSA 654:7. The office of the town or city clerk shall have the power to accept applications from such persons under the following conditions:

SENATOR BASS: Mr. President, SB 321 as amended essentially implements across the state what is done now in all but roughly 30 towns, and that is the process whereby interested individuals can apply to the town or city clerk to register to vote. There are some towns that still have the provisions whereby you have to apply directly to the supervisors. It was felt that this was not only inconsistent, but also, very substantial to citizens rights to make registration as easy as possible. This does not in any way qualify these individuals to vote. The supervisors still review the applications, but this would make it uniform across the state. The committee urges the Senate's adoption of its report of ought to pass as amended.

SENATOR CURRIER: Senator Bass, did the town clerks association testify on behalf of this bill?

SENATOR BASS: Yes, they did. They testified in support of this bill.

Committee amendment adopted.

Ordered to third reading.

**SB 331**, an act relative to gender equity in athletics. Public Affairs committee. Ought to Pass with Amendment. Senator Nelson for the committee.

**4738L**

**Amendment to SB 331**

Amend 267:1, V as inserted by section 1 of the bill by replacing it with the following:

V. One representative from the New Hampshire School Boards Association or Superintendents Association, appointed by these associations.

**SENATOR NELSON:** This bill does three things. One, it extends the date of the study from one year till 1992. Second, it adds one new member, commission on the status of women. I point to page two, line 10 of the bill, 'one member of the commission on the status of women'. Thirdly, on page three of the bill, it allows the committee to accept funds that are available to the committee that may assist the members in performing their duty. That is all the legislation does, is those three changes.

**SENATOR HEATH:** Senator Nelson, is the committee gender balanced, an equal number of men and women?

**SENATOR NELSON:** It is well balanced with well balanced people. I will tell you the truth. There was no gender discussion at all in the hearing.

**SENATOR HEATH:** How many members on the committee?

**SENATOR NELSON:** There are twelve members on the committee.

**SENATOR HEATH:** So it is an even number.

**SENATOR NELSON:** Yes, it is an even number and there is Gordon Humphrey, I would just point out that Senator Humphrey is a member of the committee and another state Representative, a male Representative from the House.

**SENATOR HEATH:** But there is no call for a gender balance on that committee?

**SENATOR NELSON:** No, sir. I just identified the three changes for you and one was not to have an equal number of men or women on the bill. Is that what you were asking me?

**SENATOR HEATH:** Well, if it is going to be changed to an odd number, then it couldn't be gender balanced, right?

SENATOR NELSON: Senator Heath, you are absolutely correct, but I believe that when you are talking about gender balance, I believe you might be referring to a bill that Senator Pressly has in that is coming before this?

SENATOR HEATH: No, I am familiar with that. I am referring to this bill now.

SENATOR NELSON: Oh, this one here . . . Well, it is 12. It is gender neutral.

SENATOR HEATH: It will be gender neutral, we can depend on that?

SENATOR NELSON: That is correct.

SENATOR HEATH: That there will be an equal number of men and women?

SENATOR NELSON: Sir, if in fact the appointment . . . I don't think that anyone really gave it that kind of thought before they went on. They looked at the qualities and capabilities of an individuals and they didn't just rely on gender. This was not a bill that said pay attention to the gender, this said put these individuals in from this area.

SENATOR HEATH: What is the name of this bill?

SENATOR NELSON: This is relative to gender equity in athletics.

SENATOR HEATH: Oh, it did mention gender, I'm sorry.

SENATOR NELSON: No, it didn't say that a certain gender had to serve on the committee, sir.

SENATOR HEATH: I understand.

SENATOR HOLLINGWORTH: I would like to answer the question for Senator Heath. I served on the committee last year and I have to say that the Senate and the House both provided one of us from each sex, so at least they carried out their responsibility. The Governor, when he made his appointments, I think that he did the same. We ended up with a committee that was pretty well balanced. Some weeks, some came, some weeks men didn't come, I mean not all the men came. So, I can't tell you that every week we had a balanced committee, but I can tell you that their opinions on how we could solve the problem and address the problem were balanced whether they were male or female.

Committee amendment adopted.

Ordered to third reading.

**SB 352**, an act relative to physical qualifications for police officers. Public Affairs committee. Inexpedient to Legislate. Senator Bass for the committee.

**SENATOR BASS:** Mr. President, the distinct Senator from district 19 appeared before our committee and recommended that the committee take no action on this bill, because of the fact that he didn't feel that it was really necessary. On the recommendation of the sponsor, the committee urges the Senate to adopt the committee report of inexpedient.

Committee report adopted.

**SENATOR CURRIER:** I have a question on whether any of the Senators knew what they were doing just a minute ago, but I don't know, maybe I was the only one that wasn't paying attention. Could you give me what the actual status of what we just did?

**SENATOR DELAHUNTY (In the Chair):** You voted the bill inexpedient.

**SENATOR CURRIER:** But the committee report was ought to pass.

**SENATOR DELAHUNTY:** The committee report was inexpedient to legislate on SB 352.

**SENATOR CURRIER:** Oh, I'm like my predecessor, I skipped a bill.

**SB 368**, an act changing statutory references to automobile graveyards, motor vehicle junkyards and junk vehicles to include automotive recycling yards or vehicles. Public Affairs committee. Ought to Pass. Senator Podles for the committee.

**SENATOR PODLES:** Mr. Chairman, and Senators, rather than referring to them as junkyards, the statutes will refer to them as automotive recycling yards. This is a very simple bill. It does not change a statute. All that it does, is it's calling them automotive recycling yards. It is a whole new industry. I was told that there are 60,000 cars that are recycled and all of these parts, every part in the car is recycled, such as rubber tires, batteries and scrap metal. The bill had no opposition. In fact, it had a lot of support and I urge passage of this bill.

Adopted.

Ordered to third reading.

**SB 408**, an act prohibiting entities from being sealers of their own weights and measures devices. Public Affairs committee. Inexpedient to Legislate. Senator Podles for the committee.

SENATOR PODLES: Mr. President and Senators, SB 408 prohibits persons from sealing their own weights and measures instruments. According to the commission of agriculture, SB 408 would essentially take apart the entire program that we have now in place which is working very, very well with one significant exception, and that is the small scale users such as the corner deli. This problem will be dealt with in SB 409, therefore this bill is unnecessary and is inexpedient to legislate.

Committee report adopted.

**SB 409-FN**, an act relative to retail store inspections by weights and measures inspectors and license fees. Public Affairs committee. Ought to Pass with Amendment. Senator Bass for the committee.

**4739L**

### **Amendment to SB 409-FN**

Amend the title of the bill by replacing it with the following:

#### **AN ACT**

relative to misrepresentations of weight by commercial packagers.

Amend the bill by replacing all after the enacting clause with the following:

1 New Section; Misrepresentation of Weight by a Commercial Packager. Amend RSA 438 by inserting after section 26-a the following new section:

438:26-b Misrepresentation of Weight by a Commercial Packager. Items involving pre-packaged food, packed by a commercial packager; found to be in violation of proper net weight listed on the package shall be considered a violation against the packer and not the retailer by the commissioner. Corrective measures shall be taken by the commissioner against the packer. The retailer shall be held liable for only those packages prepared by his establishment.

2 Effective Date. This act shall take effect January 1, 1993.

### **AMENDED ANALYSIS**

This bill assigns liability for the misrepresentation of weight on food packages packed by a commercial packager to the packer and not the retailer.

SENATOR BASS: Mr. Chairman, the amendment eliminates everything in the original bill except for section one. Section one essentially says, that as a retailer you purchase something that has been prepackaged and it says on the package 'net weight 1 lb', and subsequent to that the department of agriculture comes in and weighs

that item and it comes out as .99. The packer rather than the retailer is responsible for any fines and so forth associated with that problem. Now there is a problem with the enforcement of weights, for example, a bag of briquets. Who is going to enforce, ultimately, the fact that the consumer gets what the consumer is expecting to get. It was the position of the committee that this is a legitimate question and it needs to be addressed as a matter of policy and for purposes of presenting a committee position that we certainly feel that the retailer should not be responsible for a \$50 fine per item, for something that the retailer did not or was not responsible for packaging. The committee recommends the Senate's adoption of its amendment and the committee report of ought to pass as amended.

SENATOR HUMPHREY: Senator Bass, we understand that all provisions of the original bill have been struck except for section one. Section one is precisely the same as in the amendment which is in the nature of a substitute as it is the same language of the original bill.

SENATOR BASS: That is correct.

SENATOR HUMPHREY: Then am I not correct that the, what was it, the commissioner of agriculture or the director of the bureau of weights and measures?

SENATOR BASS: The commissioner of agriculture, Steve Taylor appeared before our committee.

SENATOR HUMPHREY: Am I not correct that the commissioner testified in opposition to this very section, section one?

SENATOR BASS: The department of agriculture, indeed placed itself in opposition of the entire bill. Their position with respect to this particular section was, that if the retailer is not responsible for the weight of what is in something that is prepackaged, who is going to be? It was basically a question of protecting the retailer versus protecting the rights of the individuals who are buying the item. It was the position of the committee, that although that is a legitimate question, the retailer should not be responsible for being assessed a fine of \$50 per unit, so that if you have 20 packages of hot dogs sitting there on your shelf and the inspector comes in and weighs them and they come out 1/10 of a pound under, there is nothing the retailer can really do about that weight problem and that the department of agriculture should be more appropriately pursuing the packers and fining them instead, because they are the people who are responsible for weighing and packaging, not the retailer.

SENATOR HUMPHREY: Senator Bass, I want to, in the form of a question, read a letter dated January 30 from the commissioner, Mr.



Taylor to the Chairman of the Public Affairs committee and the entire text is available for anyone who cares to read it here at my desk. With respect to this particular section now under discussion, the commissioner had this to say "commercial packers sell to retail establishment packages that are in package form, but without a net content or net weight statement on the package. The retailer, prior to exposing these packages for sale, determines the net content or net weight of the package. In the above instances the retailer should be held accountable, not the packer". I'm sure, Senator you agree with me, do you not, that consumer protection is an important function of the government discharged in this case by the bureau of weights and measures and that we ought to be very, very clear in passing judgement on this provision and precisely what the effect will be of this. That is a statement in the form of a question.

SENATOR BASS: Senator Humphrey, I would respond by saying I don't recall the letter from the agricultural commissioner, but I do have his testimony here, notes on his testimony and it is my opinion that the language of the amendment which is as you said, was part of the bill is cleared in saying that prepackaged food found to be in violation of proper net weight listed on the package, so it would be on the package, shall be considered a violation against the packer and not the retailer. So I don't see any way under those circumstances that we could be giving an exemption for having to list the weight on anything that was prepackaged. It is incorporated by reference in the paragraph.

SENATOR HUMPHREY: Well let's get to the heart of it. If a retailer buys from a wholesaler or a packer, a prepackaged package of meat and then himself, the retailer, weighs it and puts his label on it indicating the weight and the price, is he not held accountable under this law or is he . . .

SENATOR BASS: If he put his label and his price on it, he would then be accountable. If he charges a set price for something on the basis of what the net weight label is on the package then he would not be liable. The problem is of course, is that rather than using meat which is relatively easy problem-wise to deal with. If you get a pallet load of charcoal briquets in your parking lot, the retailer really can't weigh all of those packages of briquets and make sure that they are all exactly 15 lbs, but if that package turns out to be less than 15 lbs because of evaporation and so forth, the retailer is responsible even though there is really no practical mechanism for the retailer to be able to be sure that these prepackaged retail weights are in fact correct. If the packer is the one who is misrepresenting the weight, then it is the packer who should be held responsible for that. That is the position of the committee.

SENATOR HUMPHREY: Well, retailers don't ordinarily weigh charcoal briquets or count them, do they?

SENATOR BASS: No. Unfortunately, without the passage of this amendment that is exactly what they have to do.

SENATOR HUMPHREY: Well, perhaps then the provision of the law is necessary. I am concerned with the language here. It opens up a huge door for consumer fraud. Let us go back to the case of meat which is one of the more frequently purchased items in prepackaged form. If a retailer puts on display, a piece of meat, prepackaged, which he has weighed himself and which he has affixed his sticker indicating that weight and the price based on the weight, I believe under this language, the retailer cannot be held accountable. I think at the very least, this language needs to be revised. Let me read it, it is quite simple and I invite my colleagues to read it because this is a very important point of consumer protection. It says "items involving prepackaged food, packed by a commercial packager, found to be in violation of proper net weight listed on the package, shall be considered a violation against the packer and not the retailer". Does it say anything in there, Senator Bass, about who weighed it and who applied the label? It does not. This is a huge loophole, is it not, for a retailer to commit fraud either by accident or by design and on occasions that does happen, both ways. Is it not a huge loophole for someone to mislabel something with respect to weight and price and not be held accountable?

SENATOR BASS: What I would like to do, Mr. Chairman, in answer to Senator Humphrey's question is to move that the bill be recommitted to the committee and I would look forward to working this question out, because it is clear that we have the exact same common objective and we will do it on Thursday, if the Chair will entertain that motion at the appropriate time?

### **MOTION TO RECOMMIT**

Senator Bass moved to Recommit SB 409-FN an act relative to retail store inspections by weights and measures inspectors and license fees to the Public Affairs committee.

Adopted.

SB 409-FN is recommitted to the Public Affairs committee.

Senator Heath (Rule #42).

**SB 323**, an act establishing a committee to study the issue of physician self-referrals. Public Institutions, Health and Human Services committee.

Ought to Pass. Senator Podles for the committee.

**SENATOR PODLES:** SB 323 is establishing a committee to study physician ownership of related medical services. Testimony disclosed that doctors own their own laboratories and they refer patients to them at inflated cost, and half of this business is medicare which is of course one of our most important expenses. There are nine such laboratories owned by doctors, and the potential for conflict of interest does exist. The bill is worthy of study and the committee recommends ought to pass.

Adopted.

Ordered to third reading.

Recess.

President Dupont in the Chair.

**SB 359**, an act relative to expending moneys by the OHRV bureau for trail maintenance expenses. Wildlife and Recreation committee. Ought to Pass with Amendment. Senator Wayne King for the committee.

**4563L**

### **Amendment to SB 359**

Amend the bill by replacing all after the enacting clause with the following:

1 OHRV Trail Maintenance. Amend RSA 215-A:23, V(a) to read as follows:

(a) The first \$9 shall be appropriated to the department of resources and economic development for administration of the bureau, and shall be used by the bureau for its grant-in-aid program. These funds shall be kept in a separate account and shall not be used for any other purpose. Of the \$9, \$3 shall be used for trail maintenance and construction and \$5 shall be used for the purpose of purchasing trail grooming equipment and trail maintenance equipment. Any unexpended balance in said account shall not lapse, but shall be carried forward to the next fiscal year. Grants-in-aid shall be granted to organized nonprofit OHRV clubs and political subdivisions for the construction and maintenance of OHRV trails and facilities. The bureau shall make grants on such terms as it deems necessary and shall determine what trails and facilities shall be eligible. All trails and facilities developed and maintained under this grant-in-aid program shall be open to the general public. Notwithstanding the provisions of this subparagraph, a landowner who grants permission for a grant-in-aid trail to be located on his property shall retain the right to establish the inclusive dates during which OHRV operation shall

be permitted. The private landowner shall also retain the right to post any grant-in-aid trail located on his property against trespass by any specific activity or specific type of OHRV. The remaining \$1 from the amount collected from each individual registration fee shall be used by the bureau for the [sole purpose] **purposes** of purchasing OHRV trail maintenance equipment **or paying trail maintenance expenses**. These funds shall be kept in a separate account and shall be used and appropriated solely for [this purpose] **these purposes**. Any unexpended balance in said account shall not lapse, but shall be carried forward to the next fiscal year.

2 Effective Date. This act shall take effect upon its passage.

### AMENDED ANALYSIS

This bill provides that \$1 from all registration fees paid to the off highway recreational vehicle bureau of the department of resources and economic development shall be used by the OHRV bureau for purchasing trail maintenance equipment or trail maintenance expenses.

SENATOR W. KING: This bill merely changes two words in the current law. Currently the law says that the money is to be used for the sole purpose of purchasing OHRV trail maintenance equipment. What this does is change that so that it can be used for equipment or maintenance of the trails.

Committee amendment adopted.

Ordered to third reading.

**SB 367**, an act authorizing the department of resources and economic development to sell the Nansen ski jump facility if no interest exists in the private sector to maintain and operate the facility. Wildlife and Recreation committee. Ought to Pass. Senator W. King for the committee.

SENATOR W. KING: If you have ever taken a drive up past Berlin into the town of Milan, you have seen on the left hand side as you head up along the Androscoggin River, a very large ski jump. At this point, the ski jump is rather dangerous and expensive to maintain and the Department of Resources and Economic Development has been looking for a private purchaser of that ski jump, but have been unable to find anyone at the moment. This bill merely allows them to sell the facility if they can't find anybody interested in the private sector to maintain and operate the jump.

SENATOR DISNARD: Senator King, is there any federal money in this jump and if so, will that cause a problem in selling this jump?

SENATOR W. KING: It is my understanding that there is not federal money involved.

SENATOR NELSON: Senator King, has the \$66,000 that we appropriated for this project been spent?

SENATOR W. KING: Senator Nelson, I am afraid that I don't know the answer to that question. Senator Oleson perhaps knows. I yield to Senator Oleson.

SENATOR NELSON: Senator Oleson, has the \$66,000 been spent?

SENATOR OLESON: \$67,000. Yes.

SENATOR NELSON: The \$67,000 has been spent. I was just curious why this doesn't go to the long-range capital planning committee or the other committee called coor? Usually state property goes through. Is this bill to avoid that process?

SENATOR OLESON: I cannot answer that question.

SENATOR SHAHEEN: I guess I would like to follow up on Senator Nelsons' question. I would like to know if someone can answer why we are dealing with this rather than having it go to the long-range capital planning committee?

PRESIDENT DUPONT: Senator Shaheen, because that question has been raised, I will refer it to Capital Budget and let them take a look at it as the result of some questions.

Referred to Capital Budget (Rule #24).

**SB 375**, an act allowing the division of parks and recreation to give rewards for information leading to the recovery of stolen division property. Wildlife and Recreation committee. Ought to Pass. Senator McLane for the committee.

SENATOR MCLANE: This bill simply allows the Division of Parks to offer rewards for information for loss of equipment or such. Presently this has meant that they had to go through the Governor and Council or through the budget process in order to do something that they are doing already and would like legal right to do so.

SENATOR CURRIER: Senator McLane, is there any limitations to what they can give as a reward under this bill and where would the money come from?

SENATOR MCLANE: Excuse me, I have now reread the bill and all rewards offered under this section shall be subject to the approval of Governor and Council. I gather that the point is that they do not have to go through the budget process in order to offer a reward.

SENATOR CURRIER: They could **TAPE INAUDIBLE** is that correct?

SENATOR MCLANE: It is self-funded so that there is a fund that this money comes from and I am sure that it doesn't include \$10,000.

SENATOR CURRIER: Well what is the source of this self-funding?

SENATOR MCLANE: I defer to Senator Heath.

SENATOR HEATH: Senator Currier, it is my memory and I could be corrected, but it is my memory that they were saying that they had a group that came forward that offered them reward money and in that, those cases they wanted to be able to use that, but they also said that they have been posting signs for years that a reward is offered for people turning in people who damage or destroy equipment and that this made those signs legal even if they never offered a reward, it legalized those signs and those signs they believe have helped prevent that kind of activity as well as encourage people to report it.

SENATOR CURRIER: I think it sounds like it could go on forever with some of these questions as things proceed here. So they have had illegal signs up for a number of years then?

SENATOR HEATH: They have had signs up, but essentially didn't have any substance in law that said rewards offered for information leading to the conviction of people who damaged or destroy equipment and etc, I forget now exactly how the words on the sign are, but essentially that, yes.

Adopted.

Ordered to third reading.

**SB 386-FN**, an act relative to the publications, specialty items and fund-raising revolving fund of the fish and game department and authorizing certain fund raising by the department. Wildlife and Recreation committee. Ought to Pass. Senator Heath for the committee.

SENATOR HEATH: This essentially, I believe it expands on an already permitted amount for them to do a little bit of enterprising, for example, selling t-shirts or commemorative items. It's a way that the Fish and Game Department can raise a little money without taxation and with a small enterprise activity which they are already engaged in. I think this just changes the limits of it and gives them a little more latitude in setting some of the rules.

Adopted.

Ordered to third reading.

**SB 398**, an act permitting the sale of red deer and elk venison. Wildlife and Recreation committee. Ought to Pass. Senator Heath for the committee.

SENATOR HEATH: This is essentially a bill that allows, with strict controls, the selling of wild venison of two varieties by the Fish and Game Department and they approve it. They want to be very careful how it is raised in New Hampshire and they want to control it. This gives them that latitude and, I think, they were on the cautious side. I did ask for some information from them and I haven't received it. I asked that they get it to me before this because I had a few questions about it. Nonetheless, if that information gets to me before it's heard in the House, if it passes here, I will pursue it over there, if it is discerning information, but I don't think it will be. I think that they really looked at this and it would be a business opportunity for a number of individuals in the state of New Hampshire and as long as our wildlife are not at risk and I feel confident that they will protect that resource, I think it is a good piece of legislation.

Adopted.

Ordered to third reading.

**SB 425-FN-L**, an act relative to state and municipal cost sharing for state parks. Wildlife and Recreation committee. Ought to Pass with Amendment. Senator Cohen for the committee.

**4727L**

### **Amendment to SB 425**

Amend the title of the bill by replacing it with the following:

#### **AN ACT**

relative to statement of expenses for costs incurred  
for response to forest and brush fires.

Amend the bill by replacing all after the enacting clause with the following:

1 Expenses of Volunteer Services Included. Amend RSA 224:16 to read as follows:

224:16 Statement of Expenses. The warden shall render to the selectmen or the mayor or the authorized city department, on blanks prepared by the director of the division of forests and lands, department of resources and economic development, a statement of the expenses under RSA 224:15, incurred by said town or city, or aiding town or city which had responded upon request, as soon as possible after they are incurred, showing in detail the amount and character of the services performed, **including the costs of services rendered by volunteers**, the exact duration thereof, and all disbursements made by the warden or wardens, and bearing the approval of the warden, and of the deputy warden if said expenses were incurred by his authority.

2 Effective Date. This act shall take effect 60 days after its passage.

### AMENDED ANALYSIS

This bill requires fire wardens to include the cost of services rendered by volunteers in his statement of expenses incurred in fighting forest and brush fires.

SENATOR COHEN: Mr. President, the purpose of this bill is to help small towns which have forests and have had forest fires. Right now the towns must reimburse volunteer firefighters at considerable expense. SB 425 would keep state expenditures the same and not increase the cost to the state at all. It does allow reimbursement to the towns dealing with forest fires. The Division of Forest and Land supports it, Director of Parks and Recreation supports it and the committee recommends ought to pass on 425.

SENATOR NELSON: Senator Cohen, what do you think would be the cost of this type of service, Senator Cohen?

SENATOR COHEN: To whom?

SENATOR NELSON: To the municipalities. I thought it said, did I read it wrong, 'relative to the statement of expenses for cost incurred'? You just have to get a statement?

SENATOR COHEN: I'm not sure that I understand your question.

SENATOR NELSON: I just want to make sure that . . . I don't sit on this committee and I want to make sure that the city, the municipalities are being charged for anything. Is this strictly a statement or what?

SENATOR COHEN: I defer to Senator Shaheen, it's her bill.

SENATOR NELSON: Is this a report?

SENATOR SHAHEEN: No, Senator Nelson, in fact it is not. If you look on the change to the current statute which is on page nine, first paragraph. We have added the phrase that says 'including the cost of services rendered by volunteers'. Currently in order for a community to receive the 50 percent share of state match for fighting fires, they have to submit and pay any volunteer fire department that they have. So that the town of Nottingham for instance, had a fire at Pawtuckaway, and in order for them to receive the state share of the cost of fighting that fire, they had to submit an invoice that showed that they had paid their volunteer fire department according to a state scale, even though under normal circumstances they would not have paid their volunteer fire department for fighting this fire. This



allows towns to use those in kind services by volunteers as a match in order to get the state share. So in fact, it helps towns deal with those costs.

SENATOR NELSON: Thank you, Senator Shaheen, for that very clear explanation.

SENATOR OLESON: Senator Shaheen, the question is, we have some 2,700 incorporated townships in the state of New Hampshire. Some 24 south of my town. We have parks on top of Mount Washington, state park and unincorporated townships as well as Dolly Copp. My town gives services such as ambulance, police, fire and whatever to these areas which is at the time charged against the unincorporated townships and that is how the town recovers the money. Does this have anything to do with the unincorporated townships?

SENATOR SHAHEEN: No, it doesn't, and it wouldn't affect other towns responding. If your town has a paid fire department and you respond to a fire in a town where there is a volunteer fire department for example, the town will reimburse your fire department at the current rates. This applies only to any volunteers who would be fighting the fire.

SENATOR OLESON: Thank you.

Committee amendment adopted.

Ordered to third reading.

### ANNOUNCEMENTS

SENATOR HEATH (Rule #44): Fellow Senators, about a week ago, a reporter came into my office and it was an interview, but it was more like a conversation. I picked up the Globe Sunday and saw that he reported that I said some nice things about Senator Hollingworth and Senator Shaheen. I had said some nice things about some of the rest of you, and all of you in general. I said that you were the most intelligent Senate that I had served in. I didn't say that I agreed with everything that we have done here, but anyway, I felt bad, particularly, I said some nice things about Senator Cohen and that wasn't reported. I probably should have been more careful to either include everybody or say nothing, but I didn't want any of you to think that I don't hold you all in high esteem, I don't always agree with you, some of you I almost never agree with and some of you I agree with almost all of the time. I do hold you all in high esteem. Anybody that runs for office, I think, that if you have served in office that you are aware of the difficulties and sacrifices and I hold you all in personal esteem even if we do differ philosophically, and I didn't want anyone to read that article and to think that I was picking and

choosing. I am sorry that it got reported that way. I don't blame the reporter, it was more of a conversation than an interview and I wasn't being diplomatic enough to realize that if I mentioned some names, I should have mentioned them all. I want to make that correction that I hold you all in high esteem. Thank you.

### **RESOLUTION**

Senator Delahunty moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that the bills ordered to third reading be read a third time by this resolution, all titles be the same as adopted and that they be passed at the present time; and that when we adjourn, we adjourn until Thursday, February 6, 1992 at 1:00.

Adopted.

### **LATE SESSION**

#### **Third Reading and Final Passage**

**SB 311**, an act exempting certified fire investigators and certain towing companies from licensure under the detective agencies and securities services act, changing the qualification for fire investigators and changing the date for renewal or reinstatement of private detective licenses.

**SB 318-L**, an act relative to fire protection areas within the town of Litchfield.

**SB 321**, an act repealing an exemption for town clerks relative to voter registration.

**SB 323**, an act establishing a committee to study the issue of physician self-referrals.

**SB 331**, an act relative to gender equity in athletics.

**SB 333**, an act relative to a Piscataqua River Basin council.

**SB 359**, an act relative to expending moneys by the OHRV bureau for trail maintenance expenses.

**SB 361**, an act relative to the impact fee laws.

**SB 368**, an act changing statutory references to automobile graveyards, motor vehicle junkyards and junk vehicles to include automotive recycling yards or vehicles.

**SB 370**, an act relative to health insurance coverage for scalp hair prostheses.

**SB 375**, an act allowing the division of parks and recreation to give rewards for information leading to the recovery of stolen division property.

**SB 377-FN**, an act relative to penalties for mortgage brokers who fail to file annual reports.

**SB 386-FN**, an act relative to the publications, specialty items and fund-raising revolving fund of the fish and game department and authorizing certain fund-raising by the department.

**SB 394**, an act relative to the jurisdiction of the labor department over self-insured workers' compensation programs.

**SB 398**, an act permitting the sale of red deer and elk venison.

**SB 425-FN-L**, an act relative to statement of expenses for costs incurred for response to forest and brush fires.

**SB 430-FN**, an act relative to the establishment of regional offices for the vocational rehabilitation division.

**SJR 1-FN**, an act requiring the department of education to develop a computer education program for public schools.

Senator Currier moved to adjourn until Thursday, February 6, 1992 at 1:00 p.m.

Adopted.

Adjournment

## *February 6, 1992*

The Senate met at 1:00 P.M.

A quorum was present.

The prayer was offered by the Rev. David P. Jones, Senate guest Chaplain.

*Thank you for inviting me to cross the thin asphalt strip that separates Church from state. For a preacher to be here to pray for politicians is like a mosquito in a nudist camp, it's wonderful to be here, but you hardly know where to start. Let us pray.*

*Gentle and loving father, be present this day with the men and the women of the Senate. Open their eyes to see what is right, open their ears to hear the wisdom of one another, open their hearts that they might be channels of compassion to all who are in need. Then and only then, oh Lord, open their mouths to speak words of truth. We ask you for these things because we need them.* Amen.

Senator Hough led the Pledge of Allegiance.

## INTRODUCTION OF GUESTS

Senators Humphrey, W. King and J. King are excused for the day.

### COMMITTEE REPORTS

**SB 310**, an act establishing a chancery court within the superior court which will have jurisdiction over corporate law issues. Judiciary committee. Inexpedient to Legislate. Senator Hollingworth for the committee.

**SENATOR HOLLINGWORTH:** I would like to move that SB 310 be made a special order, the sponsor is unable to be with us today due to baby business.

### SPECIAL ORDER

Senator Hollingworth moved that we make SB 310 an act establishing a chancery court within the superior court which will have jurisdiction over corporate law issues a Special Order for February 11, 1992 at 1:10 p.m.

Adopted.

SB 310 is made a Special Order.

**SB 315-FN**, an act prohibiting judges from waiving repayment of attorneys' fees by defendants for whom public defenders, contract attorneys, or assigned counsel are appointed. Judiciary committee. Inexpedient to Legislate. Senator Nelson for the committee.

**SENATOR NELSON:** This bill does just what it says on the cover in that it prohibits judges from waiving repayment of attorneys' fees by defendants for whom public defenders, contract attorneys, or assigned counsel are appointed. The testimony indicated that this was not necessary. There were two courts out of compliance and now they are in compliance. Third, it's unenforceable. The vote out of committee was 5-0.

Committee report adopted.

**SB 337-FN**, an act increasing witness fees for law enforcement officers. Judiciary committee. Inexpedient to Legislate. Senator Colantuono for the committee.

**SENATOR COLANTUONO:** Mr. President, the committee unanimously voted inexpedient to legislate on this bill because of the enormous cost on the fiscal note. The bill singled out police officers for special treatment, and because the bill raised the witness fee higher than it was last year before the change was made all the way up to \$50. Because there is no money to fund it, and all of those other reasons, the committee requests that it be made inexpedient.

**SENATOR PRESSLY:** Senator Colantuono, it has become evident when communicating with my towns in my district that this has caused quite a burden on their budgets, the action that the legisla-

ture did take relative to this. My question is, did your committee discuss the fact that the last action taken on this issue did in fact mandate and place an added burden onto the local municipalities?

SENATOR COLANTUONO: Yes, that testimony was brought up and I probably should apologize. I guess we probably weren't unanimous. In any event, yes, that testimony did come up. However, the committee felt that this matter could be handled in other ways and this was not the proper vehicle for handling the problem.

SENATOR PRESSLY: Could you be more specific in how you thought the legislature should reimburse the municipalities that now have added costs because of last years legislation?

SENATOR COLANTUONO: Well, what I meant by saying it could be handled in other ways, for example, if the bill had addressed all witnesses and not singled out law enforcement officers, if the bill had simply gone to perhaps \$15 for half day attendance instead of \$50 for a whole days' attendance, different approaches like that might have made a difference, but the way the bill was written and no amendments were offered by the sponsors or anyone else, we just felt that we couldn't support that. That added almost \$1,000,000 increase to the budget when there is no money available.

SENATOR PRESSLY: Thank you.

SENATOR HOLLINGWORTH: I am not going to move to change the committee vote on 337 and my reasons for that is not because I don't think it's necessary that we address this problem, but because there are two bills that are now being heard in the House that I think will better address the problem and that the House subcommittee has passed ought to pass on one of them and has not taken an action on the other. I think it is a serious problem. When I worked on the budget last year, I was one of the people who thought that when we passed the \$12 for a half a day, it was not going to create a burden on the communities, but low and behold it has. I have some testimony here from some communities that it has created an extreme burden on a good percent of our communities. I am hoping that this committee, Judiciary or whatever committee that should be getting those from the House will pay particular attention to those pieces of legislation. Perhaps we will have a better understanding of what we did to our local governments. I know that it is not the Senates' desire to pass the burden back onto our communities at any time.

SENATOR PRESSLY: Senator Hollingworth, the question I have is a point of clarification for those of us that are extremely concerned about the added burden that was placed on the local governing

bodies. If we agreed to have this go as inexpedient to legislate, that there will be other opportunities in this session to address the problem?

SENATOR HOLLINGWORTH: Yes, I do believe that the House is going to take an action on the bill ought to pass, and therefore, I feel we are going to be alright to address that problem. Thank you.

Committee report adopted.

**SB 338**, an act establishing the crime of official abuse. Judiciary committee. Inexpedient to legislate. Senator Colantuono for the committee.

SENATOR COLANTUONO: This bill attempts to add a new crime to the criminal code which would essentially make it illegal for a police officer to use unnecessary fiscal force to accomplish the arrest of a person. There are basically two reasons why the committee voted inexpedient. One, is that these types of activities are already criminalized under the assault statutes, but secondly, if the legislature wants to do any fine tuning, the committee felt that we could do it via SB 27 which was passed to the House last year and they rereferred it. They worked on it over this summer and they just passed it and are sending it back to us. It sets out enhanced penalties for either party involved in an altercation, whether it be a civilian or a police officer. We felt that we could address this problem if we needed to, under that bill.

SENATOR ROBERGE: I would respectfully suggest that SB 338 be put on the table appending SB 27 coming over from the House. I think that we can melt these bills together and we will have a good product.

Senator Heath moved that we have SB 338 an act establishing the crime of official abuse laid on the table.

Adopted.

### LAID ON THE TABLE

**SB 338** an act establishing the crime of official abuse is laid on the table.

**SB 342**, an act relative to resisting arrest or detention. Judiciary committee. Inexpedient to Legislate. Senator Nelson for the committee.

SENATOR NELSON: SB 342 relative to resisting arrest or detention is inexpedient to legislate because in fact, it was seen that it could loosen the law rather than tighten the law. We had a lot of opposition to the bill and we voted against it. It was unanimous.

Senator Roberge moved to have SB 342 an act relative to resisting arrest or detention laid on the table.

Adopted.

### LAID ON THE TABLE

SB 342 an act relative to resisting arrest or detention is laid on the table.

**SB 346**, an act relative to certain restraining orders and requiring arrest for certain violations of such restraining orders. Judiciary committee. Ought to Pass with Amendment. Senator Russman for the committee.

**4844L**

### Amendment to SB 346

Amend the bill by replacing section 1 with the following:

1 Divorce; Restraining Orders. RSA 458:16 is repealed and reenacted to read as follows:

458:16 Temporary Relief and Permanent Restraining Orders.

**I.** After the filing of a libel for divorce, annulment, **separation** or a decree of nullity, the superior court may issue orders with such conditions and limitations as the court deems just which may, at the discretion of the court, be made on a temporary or permanent basis. Temporary orders may be issued ex parte. Said orders may be to the following effect:

(a) Directing any party to refrain from abusing or interfering in any way with the person or liberty of the other party.

(b) Enjoining any party from entering the premises wherein the other party resides upon a showing that physical or emotional harm would otherwise result.

(c) Enjoining any party from contacting the other party at, or entering, the other party's place of employment or school.

(d) Enjoining any party from harassing, intimidating or threatening the other party, other party's relatives regardless of their place of residences, or the other party's household members in any way.

(e) Determining the temporary custody and maintenance of any minor children as shall be deemed expedient for the benefit of the children; provided, however, that no preference shall be given to either parent in awarding such custody because of the parent's sex.

(f) Ordering a temporary allowance to be paid for the support of the other.

(g) Enjoining any party from transferring, encumbering, hypothecating, concealing or in any way disposing of any property, real or personal, except in the usual course of business or for the necessi-

ties of life, and if such order is directed against a party, it may require him to notify the other party of any proposed extraordinary expenditures and to account to the court for all such extraordinary expenditures.

II. If temporary orders are made ex parte, the party against whom the orders are issued may file a written request with the clerk of the superior court and request a hearing thereon. Such a hearing shall be held no later than 5 days after the request is received by the clerk for the county in which the libel for divorce, annulment, separation or decree of nullity is filed.

III. When a party violates a restraining order issued under this section by committing assault, criminal trespass, criminal mischief, or another criminal act, peace officers shall arrest the party, detain the party pursuant to RSA 594:19-a and refer the party for prosecution. Such arrests may be made within 6 hours after a violation without a warrant upon probable cause whether or not the violation is committed in the presence of a peace officer.

SENATOR RUSSMAN: As most of you may know there is now a mechanism in place called the domestic violence petition that protects abused spouses of either sex from the other and it gives the police authority to arrest them once the domestic violence petition is granted by the courts. Sometimes an attorney would go to court and get what they called an ex parte restraining order, which is not a domestic violence petition. While it has a civil contempt it has no aspect for the police to enforce it in terms of making an arrest without a warrant as they can under the domestic violence petition. This makes the restraining order part of the statutes track, the domestic violence portion, it makes them both consistent so that in either event the police would have the opportunity to make the arrest should the person who is under the restraint violate the courts order.

Committee amendment adopted.

Ordered to third reading.

**SB 350**, an act expanding the membership of the task force on mental health and criminal justice and continuing the study of the interactions between the mental health and criminal justice systems. Judiciary committee. Ought to Pass with Amendment. Senator Russman for the committee.



4846L

**Amendment to SB 350**

Amend section 1 of the bill by replacing it with the following:

1 New Subparagraphs; Members Added. Amend 1991, 212:2, I by inserting after subparagraph (p) the following new subparagraphs:

(q) A representative of the New Hampshire Public Defender Program, appointed by the executive director of such program.

(r) A person representing individuals with head injuries, appointed by the executive director of the National Head Injury Foundation - New Hampshire.

(s) An alcohol and drug abuse counselor, appointed by the director of the office of alcohol and drug abuse prevention.

(t) A representative of the Disabilities Rights Center, appointed by the executive director of the center.

(u) A representative of the New Hampshire Trial Lawyers Association, appointed by the executive director of the association.

(v) Two representatives of the New Hampshire Public Defender Office, one from the county office and one from the appellate defender office, appointed by the executive director of the office.

(w) A representative of the Association of Retarded Citizens, appointed by the association.

(x) A representative of the New Hampshire Civil Liberties Union, appointed by the executive director of the union.

SENATOR RUSSMAN: This bill simply seeks to extend the life of the task force which was studying the various aspects between mental health and the criminal justice system. It also seeks to expand the committee and in a sense becomes sort of a Noah's Ark as in terms of numbers of people that are on this committee. The idea was that there were some people who thought or felt that people that were perhaps under handicap were not adequately represented, so we had asked that some various people suffering with handicaps and others be extended into the committee to make it a little more represented and a little more open in terms of its representation.

SENATOR HEATH: So is it gender balanced?

SENATOR RUSSMAN: Yes in a sense, it is. I have seen the various populations that we have and in terms of preferences we are balanced on that committee.

Committee amendment adopted.

Ordered to third reading.

**SB 353**, an act relative to copying recordings. Judiciary committee. Ought to Pass with Amendment. Senator Russman for the committee.

4842L

**Amendment to SB 353**

Amend the bill by replacing section 2 with the following:

2 New Paragraph; Definitions Added. Amend RSA 352-A:1 to read as follows:

352-A:1 Definitions. [As used] In this chapter:

I. "Owner" means the person who owns the original fixation of sounds embodied in the master [phonograph record, master disc, master tape, master film or other device] **recording** used for reproducing recorded sounds on [phonograph records, discs, tapes, films or other articles on which sound is recorded] **sound recordings** and from which the transferred sounds are directly or indirectly derived.

II. "Performer" means a person or persons appearing in a performance, whether live before an audience or transmitted by radio, television or other means.

III. "Person" means any natural person, group, firm, partnership, corporation, association, or any other legal entity.

IV. "**Recording**" means any article now known or later developed on which sounds, images, or both, are recorded or otherwise stored, and includes any phonograph record, wire, film, audio or videotape, audio or video cassette, or audio or video disc.

Amend RSA 352-A:5, I and II as inserted by section 5 of the bill by replacing them with the following:

I. **Notwithstanding title LXII**, any person who violates any provision of [RSA 352-A:2, I] **this chapter**, shall be guilty of a class B felony **punishable by up to 2 years in prison, a fine of up to \$250,000, or both, if the offense involves 100 or more sound recordings or 7 or more audiovisual recordings during a 180-day period**. Each individual [manufacturer] **manufacture** of such recorded article shall constitute a separate offense.

II. **Notwithstanding title LXII**, any person who violates any provision of [RSA 352-A:2, II] **this chapter**, shall be guilty of a misdemeanor, **punishable by up to one year in prison, a fine of up to \$25,000, or both, if the offense involves fewer than 100 sound recordings or fewer than 7 audiovisual recordings during a 180-day period**.

**AMENDED ANALYSIS**

This bill strengthens New Hampshire's law on copying recordings. The bill adds references to new recording media such as videocassettes and compact discs. The bill also increases the penalties for and forfeitures of such unlawful recordings.

SENATOR RUSSMAN: Yes, this bill, while it should have been Senator Hollingworth's, became mine. But in event, putting that aside, virtually every video store in the state supports this legislation. What has been happening apparently, is that people rent tapes and they go home and they record the movies, and then they go out and sell them on the street corner. Apparently, that is a violation of law and this seeks to put more teeth into that and people will not be able to sell these pirated video tapes on every street corner. I was not aware that it was a major problem, but apparently in some parts of Nashua and Manchester with all due respect of course, there have been instances, so we would ask for your support.

Committee amendment adopted.

Ordered to third reading.

**SB 378**, an act transferring duties under the uniform reciprocal enforcement of support act from county attorneys to the office of child support enforcement services. Judiciary committee. Ought to Pass with Amendment. Senator Colantuono for the committee.

**4847L**

#### **Amendment to SB 378**

Amend the bill by replacing section 12 with the following:

12 Effective Date. This act shall take effect September 1, 1993.

SENATOR COLANTUONO: This bill takes away the obligation of the county attorneys and their staffs to administer the uniform reciprocal enforcement of support act, which essentially helps parents get child support payments from ex-spouses who don't pay through an interstate system. This has become too much of a burden on the county attorneys. The bill was put in to give that duty over to the state office of Child Support Enforcement Services. The committee felt that the policy behind the bill was very sound and they want to make this change; however, there are two important issues that seem to have been overlooked. First of all, there should have probably been a fiscal note because the state office would have to hire additional attorneys and staff people and it would take some time to get it up and running. There is no money available as far as we know in the current budget cycle. What we did was we changed the effective date. It is on page five of the calendar, to make it not effective until September 1, 1993 so it would go into the next biennial cycle. The other thing that we did was ask that the matter be transferred to the Finance committee under rule #24, rather than have a vote on the committee report right now to see if there is, or likely will be, money available to make this change. If there is, we think it is a good idea, if there is not, then we probably shouldn't make the change.

Committee amendment adopted.

Referred to Finance (Rule #24).

**SB 382**, an act establishing a study committee on the selection, nomination and confirmation of judicial appointees. Judiciary committee. Ought to Pass with Amendment. Senator Russman for the committee.

**4843L**

#### **Amendment to SB 382**

Amend section 1 of the bill by replacing all after paragraph VI with the following:

VII. Two public members, appointed by the governor.

VIII. One executive councilor, appointed by the executive council.

**SENATOR RUSSMAN:** I have been elected to run interference with Senator Nelson on this bill and I would urge your support of it. Hopefully this will on one hand, it appeared that you are getting more politicians involved with a process that really shouldn't be political at all. Senator Nelson is to follow so you may want to keep your questions for her, but this bill will enable it to take a good look and be able to serve the judicial process well.

**SENATOR NELSON:** I would like to commend Senator Russman for his articulate, brief presentation of a very good piece of legislation.

Committee amendment adopted.

Ordered to third reading.

**SB 401**, an act exempting chiropractors from jury service. Judiciary committee. Ought to Pass with Amendment. Senator Colantuono for the committee.

**4845L**

#### **Amendment to SB 401**

Amend the title of the bill by replacing it with the following:

#### **AN ACT**

removing the exemption from jury service  
for physicians and surgeons.

Amend the bill by replacing section 1 with the following:

1 Physicians and Surgeons Not Exempted From Jury Service.  
Amend RSA 500-A:9, I to read as follows:

I. The governor, secretary and treasurer of the state, judges and clerks of court, registers of deeds and probate, sheriffs and their deputies, attorneys-at-law, [practicing physicians and surgeons,] and firemen and policemen are exempt from serving as jurors.

### AMENDED ANALYSIS

This bill removes the exemption from jury service for physicians and surgeons.

SENATOR COLANTUONO: Senator Disnard and I joined forces on this bill to establish some parity between doctors of chiropractic and other forms of physicians and surgeons in terms of getting exempted from jury duty. After hearing the bill, there was very little opposition by the way, at the public hearing. When we executed the bill yesterday there seemed to be no support in the committee for my position. I couldn't get an ought to pass motion, I couldn't even get a second on my motion of ought to pass. So with that having taken place, I made a substitute motion of ought to pass with amendment. The amendment being to take out physicians and surgeons from the jury exemption statute to create parity that way. Much to my surprise, the motion was seconded, and I believe unanimously voted on. The amendment is here on page six of the calendar and we offer that with our recommendation.

SENATOR HOLLINGWORTH: Senator Colantuono, under the present laws that cover jury duty, is it not true that someone can be exempt from jury duty for a good cause shown?

SENATOR COLANTUONO: Yes.

SENATOR HOLLINGWORTH: Thank you.

SENATOR NELSON: Senator Hollingworth, was that the reason that the committee took this part out, because they already have access to that and we thought that doctors would add a lot on a jury trial?

SENATOR HOLLINGWORTH: Yes, that is true, Senator.

SENATOR CURRIER: Mr. Chairman, a lot of people are having fun with this particular amendment, but I personally think it stinks. I rise to oppose the pending amendment. I think that it is quite unfair for a committee amendment without a public hearing to take out physicians in this bill without properly having that particular aspect heard. It just doesn't make sense to take something out from a bill that was intended to put somebody else actually in.

SENATOR NELSON: Mr. President, just so that we do not, just because we are smiling today doesn't mean that we were poking fun at any individual or group because we obviously, respect all groups

of citizens in the state of New Hampshire. The fact of the matter is, having come before this New Hampshire legislature for many years, for the fact that we don't have a lot of jurors, the pool is small and we are always looking for ways to select them. So as Senator Hollingworth stated, there is a way for people to not serve jury duty, and we felt that we could go by that current law.

SENATOR SHAHEEN: Senator Colantuono, I guess the question that I have, is this a problem? I have not heard from any of my constituents, ever, that if they have had a good reason, they have not been allowed to not serve on a jury. I guess I am a little, I guess I'm not sure why this is such a big issue, would you believe?

SENATOR COLANTUONO: I believe that this shouldn't be a big issue.

SENATOR SHAHEEN: Well what is the problem with killing the bill?

SENATOR COLANTUONO: No, I think that we are on the amendment and I support the committee position.

SENATOR PRESSLY: Senator Colantuono, for those of us who do not serve on your committee, could you tell us a little bit about the procedures to not serve on jury duty or how long it is and/or how complicated it might be?

SENATOR COLANTUONO: To serve on jury duty?

SENATOR PRESSLY: To be excused from serving?

SENATOR COLANTUONO: Normally, if you are picked for jury duty, you present yourself to the judge or the clerk at the beginning of when you are called in and present your reasons. They can and often do, excuse you from the pool for the entire period.

Committee amendment adopted.

Senator Currier in opposition to committee amendment on SB 401.

### SUBSTITUTE MOTION

Senator Currier moved to substitute Indefinitely Postponed for Ought to Pass with Amendment.

SENATOR DISNARD: I rise in opposition to that motion. I feel the intent of the original bill was to include chiropractors with the same rights and privileges as the medical profession to assist their clients and patients as well as the doctors, and now what we are saying, if what Senator Currier suggests is passed, that means once again the chiropractors in this instance, would be looked upon as second class

citizens in terms of their patients. I know we all have differences of opinions with chiropractic requests in the past, but I don't think that this is realistic.

Division vote requested.

Question is on the substitute motion of indefinitely postponed.

Yeas 3

Nays 16

Substitute motion fails.

Ordered to third reading.

**SB 406**, an act relative to penalties for second DWI offenses. Judiciary committee. No Recommendation. Senator Podles for the committee.

**SENATOR PODLES:** I moved to have SB 406 laid on the table and I want to tell you why . . .

Recess.

Out of recess.

**SENATOR PODLES:** I move to withdraw my motion.

**SENATOR PODLES:** Mr. President, the committee recommends that SB 406 go to the Supreme Court for a ruling.

Senator Heath moved to have SB 406 an act relative to penalties for second DWI offenses laid on the table.

Adopted.

### LAID ON THE TABLE

SB 406 an act relative to penalties for second DWI offenses is laid on the table.

**SB 426-FN**, an act establishing a task force to develop a strategy to train police and prosecutors to successfully prevent, investigate and prosecute sexual assault cases. Judiciary committee. Ought to Pass with Amendment. Senator Hollingworth for the committee.

4848L

### Amendment to SB 426-FN

Amend paragraph XII of section 2 of the bill by replacing it with the following:

XII. The superintendent of a county department of corrections, or designee.

XIII. The director of the police standards and training council.

XIV. An attorney representing the department of justice, appointed by the attorney general.

SENATOR HOLLINGWORTH: The committee on Judiciary would like to move ought to pass with amendment for SB 426. This is one of three bills that were created by the ADHOC committee set-up to study New Hampshire rate laws and statutes and/or regulations. This bill would set up a committee that would set procedures for training police officers and prosecutors. In our testimony this was one of the subcommittees that was set up and they heard a great deal of evidence that showed that throughout the state there was a different treatment of people who had been sexually assaulted. Also, the ability to bring a case successfully to prosecution. We heard a great deal of testimony from people throughout as victims, police prosecutors, county attorneys, and everyone felt strongly that there needed to be some kind of set procedure throughout the state where we could train our police officers in a way that they could better handle those cases. This bill does exactly that. We hope that you would support this very important legislation.

Committee amendment adopted.

Ordered to third reading.

Recess.

Out of recess.

**SB 391**, an act relative to the use of surplus campaign funds by candidates for state office. Public Affairs committee. Ought to Pass with Amendment. Senator Bass for the committee.

**4628L**

### **Amendment to SB 391**

Amend the title of the bill by replacing it with the following:

#### **AN ACT**

relative to the use of surplus campaign contributions  
by candidates for state office.

Amend the bill by replacing all after the enacting clause with the following:

1 Use of Surplus Campaign Contributions. Amend RSA 664:4-b to read as follows:

664:4-b [Excess] **Surplus** Campaign Contributions.

I. **Surplus** campaign contributions [received in excess of the candidate's expenditure limit] shall not be used for personal expenses or transferred to any other candidate.

II. Such [excess] **surplus** contributions may be used after a general or special election for fund raising activities and any other politically related activity sponsored by the candidate.



2 Effective Date. This act shall take effect 60 days after its passage.

### AMENDED ANALYSIS

This bill prohibits a candidate from using surplus campaign contributions for personal expenses or from transferring such contributions to any other candidate.

### MOTION TO RECOMMIT

Senator Bass moved to have SB 391 an act relative to the use of surplus campaign funds by candidates for state office recommitted to the Public Affairs committee.

SENATOR SHAHEEN: Senator Bass, why is there a concern about the drafting of the bill? Why are you asking to recommit it to committee?

SENATOR BASS: Yes, there are some other aspects of it that the committee wishes to review before we present it to the Senate.

SENATOR SHAHEEN: Specifically?

Recess.

Out or recess.

SB 391 is recommitted to the Public Affairs committee.

**SB 409-FN**, an act relative to retail store inspections by weights and measures inspectors and license fees. Public Affairs committee. Ought to Pass with Amendment. Senator Bass for the committee.

4818L

### Amendment to SB 409-FN

Amend the title of the bill by replacing it with the following:

#### AN ACT

relative to misrepresentations of weight by commercial packagers.

Amend the bill by replacing all after the enacting clause with the following:

1 New Section; Misrepresentation of Weight by a Commercial Packager. Amend RSA 438 by inserting after section 26-a the following new section:

438:26-b Misrepresentation of Weight by a Commercial Packager. Items involving pre-packaged food, packed by a commercial packager, found to be in violation of proper net weight listed on the package shall be considered a violation against the packer and not the

retailer by the commissioner. Corrective measures shall be taken by the commissioner against the packer. The retailer shall be held liable for only those packages weighed or measured by his establishment.

2 Effective Date. This act shall take effect January 1, 1993.

### AMENDED ANALYSIS

This bill assigns liability for the misrepresentation of weight on food packages packed by a commercial packager to the packer and not the retailer.

SENATOR BASS: Mr. President, you all may recall that this is the bill that the Senate had before it on Tuesday. As a result of some good questions that were posed by Senator Humphrey, we recommitting it back to committee and upon discussion with him, the agricultural commissioner, we changed the words 'prepared'. If you look at the calendar today, the very last line of the amendment we substituted the word 'weighed or measured' for the word 'prepared' which has satisfied everyone's concern. The committee urges the Senate's adoption of the committee report of ought to pass as amended.

SENATOR HOLLINGWORTH: I would like to say that I am the sponsor of this piece of legislation. I support the committees amendment. I would like to say that this bill did have two other parts to it which I felt were very important but have been dropped off and I accept that. I think that they perhaps need to come in under another piece of legislation. I would like to bring it to the Senate's mind that this bill contained the cost of scales being licensed and inspected by the Department of Weights and Measures. I think that this is an important issue because this is an area where we are increasing fees to people who are doing business in the state. What this would have done was to try and make sure that those people who provide a service to businesses in the state recognize that it is not our intent to create burdens on our towns and cities. What the bill would have originally done was to make sure that the weights and measures did not increase the fines, and in fact, since 1980 the fines have increased considerably. It is about \$50 for one scale in some of the supermarkets. This is a real burden to have these scales to be sealed and to be inspected. It used to be that the Department of Weights and Measures used to come in and do simple repairs and they used to do it, in 1980 it was \$5 a scale. It increased to \$12 and \$18 and now it has gone up again. I think that this is something that we have to pay particular attention to. We are creating burdens on our businesses. While we are in this economic problem we have to bear that in mind and try not to have this continue.

Committee amendment adopted.

Ordered to third reading.

Recess.

Out of recess.

**SB 312-FN**, an act relative to mandatory testing for health care providers and certain patients for communicable diseases. Public Institutions, Health and Human Services committee. Inexpedient to Legislate. Senator McLane for the committee.

### SPECIAL ORDER

Senator Delahunty moved that SB 312 an act relative to mandatory testing for health care providers and certain patients for communicable diseases, be made a Special Order for February 13, 1992 at 1:01 p.m.

Adopted.

SB 312 is made a Special Order.

**SB 374**, an act requiring retail establishments to disclose the existence of certain wax or resin coatings by displaying the shipping label or a large sign. Public Institutions, Health and Human Services committee. Inexpedient to Legislate. Senator Bass for the committee.

SENATOR BASS: Mr. President, this bill comes about as a result of some concern that is expressed by certain individuals with respect to the Department of Health rulemaking procedure involving the marking of additives to foods, most specifically fresh vegetables. The committee felt that basically the concept of having to place the shipping label itself, the whole box on the counter where all the food was being displayed was probably not in the best interest, obviously of the store owner, but certainly not in the best interest of maintaining good sanitary conditions around the areas where the produce was displayed. The committee wishes to point out that at the current time, the store owners are required to post a sign which indicates what additives are added to foods. The consumer protection is already there. This would have gone a step further; perhaps a step too far. The committee urges the Senate's support of its report of inexpedient to legislate.

SENATOR COLANTUONO: Senator Bass, does present law require a disclosure in a sign form in stores right now?

SENATOR BASS: Yes. It's actually in rule. Administrative Rules took the issue up about six months ago. What the rules require, as I

recall, is that the retailer place in the area of which the food is displayed, a sign that says this produce contains, and then they list whatever it may contain.

SENATOR COLANTUONO: What is the size of the sign required now by rules?

SENATOR BASS: I can't remember whether they specify a size or whether they say something like clearly visible to . . . it may be just a generic. It has not been my observation, again having been through the rules process, that there was any complaints with respect to the size or legibility of the size.

SENATOR COLANTUONO: Was this bill put in by the merchants or the grocers to give them more latitude or was it put in by people who want better disclosure?

SENATOR BASS: It was put in by people who want better disclosure. In fact, the merchants, the food retail grocers provided an amendment which would have repealed all of the labeling requirements completely across the board, which the committee rejected.

SENATOR NELSON: I just want to say that I went shopping the other day, usually my husband does it, but this time I did it. What I wanted to say is that I particularly noticed this really good looking apple, because it looked waxy and I didn't see any sign. So I just want to say that in not voting for this bill, I mean in not passing this, somehow we had better make sure that they are actually doing what they are suppose to be doing in rules, because there are a lot of people concerned about this. My guess is that what is going on now isn't enough, otherwise, I wouldn't be noticing polished apples without signs. Thank you.

SENATOR COHEN: Senator Bass, just to straighten this out, you say that the current regulation rules require descriptions of what is in the fruit, but do they specifically call for telling the consumer what is on the outside of the fruit?

SENATOR BASS: I am sorry, Senator Cohen, I couldn't hear your question because Senator Nelson was throwing a waxy apple at me.

SENATOR COHEN: Senator Bass, my question just for clarification. You say that the current requirements do call for descriptions of what has gone into, what additives there are in the product being sold, but do they specify wax or resin coatings on the outside of the fruit?

SENATOR BASS: The way that the system works now is in a given section of produce, there will be a sign somewhere that is clearly visible that says, warning or something like that. The produce

herein may contain any of the following additives and they list them all out, waxes, resins and so forth. What the existing rules do not call for is on each section, a banana versus an apple, versus a cucumber, that they list the additives for that particular vegetable wherever it may be. Now, it is clear that SB 374 attempts to do that, but the way that they attempt to do that is to require that the box itself, the label be torn off of the box. The label or placard shall be placed in a conspicuous place in the produce section of the store. So if you have say 30 vegetables, what this bill would do, would be to take 30 crates, cut the ends off, even if it was wood and then lay these things around the produce section. It just didn't seem to be a particularly practical application to the problem.

Committee report adopted.

**SB 443-FN**, an act requiring the division for children and youth services to develop, implement and administer an automated case management system. Public Institutions, Health and Human Services committee. Ought to Pass. Senator Podles for the committee.

**SENATOR PODLES:** SB 443 requires that the DCYS develop, implement and administer an automated case management system. DCYS is charged with the impossible tasks of tracking and monitoring thousands of children whose safety is at stake, yet there is no given tools to do the job. This is going to give them the tools to do the job properly. It is actually an investment in our children's safety. The committee recommends ought to pass.

**SENATOR DISNARD:** Senator Podles, your idea sounds realistic, but some people in this body have been concerned about additional costs. This bill will increase state expenditures by \$3,000,000. Where might this \$3,000,000 come from or how might this be obtained?

**SENATOR PODLES:** We are going to send this on to Finance, Senator Disnard. It will cost \$3,000,000 to put it into place and it will also cost \$250,000 a year to maintain, and this will be a capital expenditure.

**SENATOR DISNARD:** In other words you want to increase the budget?

**SENATOR PODLES:** This is a very necessary tool for DCYS. We want to know where our children are and they have sort of been at a loss. They have to do an awful lot of paperwork. This is going to be a tool. This has been in the making for the last five years, Senator.

**SENATOR DISNARD:** Would you believe that I agree with you, but I just wanted you to say that there are times when we need more money.

SENATOR HEATH: I rise in support of this legislation. That agency has lost checks that have caused bitter feelings between spouses and ex-spouses who had finally achieved some kind of agreement and cause these things to get going again. They have held, intercepted IRS checks for the maximum which the federal law allows and then a little bit longer because of their time delays in handling it so that the families who are suppose to be the recipients are out of this money which is owed to them and is extremely necessary, particularly for single mothers with children in excess of six months. This couldn't happen soon enough. I applaud your effort in doing this.

Referred to Finance (Rule #24).

**SB 473-FN-A**, an act relative to a fund for organ transplantation and transferring responsibility from vocational rehabilitation to the division of human services. Public Institutions, Health and Human Services committee. Ought to Pass. Senator McLane for the committee.

SENATOR MCLANE: This is a bill that was referred to study in the last session. Senator John King and I were members of the study committee which met several times. The bill that is before you is the report of that study committee. Talking about spending money, Senator Disnard, this one is going to cost us about half a million and it has to be done. It is a matter of the state of New Hampshire facing up to responsibilities that every other state in the union faces. We are the only state that has taken money for organ transplants and taken the money out of Voc Rehab because there you could get a federal match. It is time that we stopped. The Voc Rehab is supposed to, through the use of prostheses and lessons and health care, get people ready to take jobs. They were not put in this world to do organ transplants. There are 3,700 people on the waiting list at Voc Rehab. The reason is that we have been using the money for five organ transplants. A heart transplant costs up to \$75,000, a heart and lung transplant costs about \$150,000, a bone marrow transplant costs about \$50,000. That is what we have been doing with very, very few cases and making 3,700 people wait for their hearing aids, wait for their wooden legs or whatever it is enabling them to go and get a job. So I ask that you send this bill on to Finance and that Finance do the right thing which is to have Health and Human Services handle all requests for organ transplants and not take the money from Voc Rehab.

Referred to Finance (Rule #24).

**SB 388-L**, an act relative to preserving utility licenses on municipal and state discontinued highways. Transportation committee. Ought to Pass with Amendment. Senator Cohen for the committee.

**4837L**

**Amendment to SB 388-LOCAL**

Amend the bill by replacing section 2 with the following:

2 Utility Easements Reserved. Amend RSA 231:46 to read as follows:

231:46 Authority to Reserve Existing Utility Easements. When any class IV, V or VI highway, or any portion thereof, has been discontinued, [the city or town may reserve] **any existing sewer, drain, water, pipe [and] or other utility easements or any permits or licenses previously established pursuant to RSA 231:159-182 shall be presumed to be reserved and shall remain in effect as an encumbrance upon the underlying land for so long as they remain in active use, unless such easements, permits or licenses are expressly included in the vote to discontinue the highway, or are subsequently discontinued by vote of the city or town.**

SENATOR COHEN: The Transportation committee recommends ought to pass as amended. The purpose of this bill is such that roads that are no longer in full active use that they may be a lower class than a discontinued class road, but they still have operating utilities that those easements shall be reserved and remain in effect as an incumbency upon the land as long as they remain in active use. This is not a mandate to the towns; this is just allowing the towns to keep these licenses on discontinued roads. The committee recommends ought to pass.

Committee amendment adopted.

Ordered to third reading.

**SB 389-FN**, an act allowing for the surviving spouse of a POW veteran of war to maintain the POW plates privilege. Transportation committee. Inexpedient to Legislate. Senator Heath for the committee.

Recess.

Out of recess.

Senator Heath moved that we have SB 389 an act allowing for the surviving spouse of a POW veteran of war to maintain the POW plates privilege laid on the table.

Adopted.

**LAIID ON THE TABLE**

SB 389 an act allowing for the surviving spouse of a POW veteran of war to maintain the POW plates privilege is laid on the table.

**SB 405-FN**, an act relative to driver attitude training for repeat and habitual offenders. Transportation committee. Ought to Pass. Senator Cohen for the committee.

Recess.

Out of recess.

**SENATOR COHEN:** The Transportation committee recommends ought to pass for SB 405. This is to prohibit the restoration of a persons driver's license until that person has demonstrated successful completion of an attitude program. Studies have found that these programs are successful once a driver goes through this program, he or she is more able to adjust the attitude which is oftentimes a problem in causing repeat offenders and violators in driving problems. It has been shown to reduce accidents by about 28 percent and violations about 55 percent. The committee recommended a vote of ought to pass on this bill.

**SENATOR NELSON:** Senator Cohen, what is an attitude? How is attitude defined in the law?

**SENATOR COHEN:** I recognize that that can be a difficult problem. But this is dealing with someone who has some driving violations and it's just another way of getting to the problem.

**SENATOR NELSON:** I'm sorry, I couldn't hear you.

**SENATOR COHEN:** Well another way to ask that is, you could ask what is a drinking problem? I mean some people may consider one thing a problem and other people would not, so you're right. It is kind of a vague definition, it might have to be tightened up.

**SENATOR NELSON:** I wasn't saying anything like that, I was asking you, did they describe the attitude program? What is an attitude program?

**SENATOR COHEN:** Well they described the program, yes, specifically. I thought you said the problem. The program is a group program that uses a group process where people who are involved in it, the violators, discuss their various attitudes towards driving and it is shaped that way.

**SENATOR NELSON:** How much does an attitude program cost an attitude driver?

**SENATOR COHEN:** I can't answer that right now, perhaps Senator Roberge can.



SENATOR NELSON: What happens to an indigent family or someone who just can't afford it with the economy, does the state pay for that program and are they required to pay it back or what was the aspect for that?

SENATOR COHEN: Well as I understand under this, that if they didn't go through the program then they wouldn't get their license back.

SENATOR NELSON: I am sorry if I wasn't making my question clear.

SENATOR COHEN: No, it's clear.

SENATOR NELSON: What happens if an individual can't afford it given the economics or being indigent, is the state required to pay back the individual if a public defenders has been involved?

SENATOR COHEN: No. The state is not required to pay. It is up to the individual and it may, I believe, that you may be right, it might prove much more of a burden for people who are in a difficult financial situation.

SENATOR DISNARD: Senator Cohen, I certainly understand a habitual offender. What does repeat mean? If I have a stop sign violation and then I have a speeding violation, does that mean repeat and I would fall under this type of training or education?

SENATOR COHEN: It says repeat and habitual offenders here. I'm not in the bill actually.

SENATOR DISNARD: Where are these courses located? If I am in Berlin and I am not a habitual offender, but I am a repeating stop sign offender, do I have to travel to Nashua or to Portsmouth for the course and will the state insure that there will be courses, like liquor stores, within a reasonable distance from my home?

SENATOR COHEN: I believe that our discussion was that they would be located in various locations throughout the state. I am not certain exactly where they would be located at this point.

SENATOR HOLLINGWORTH: Senator Blaisdell, this seems similar to what we have in law for the training program for those people convicted for DWI offenses, could you tell me what it costs the state to provide services for those people who are not able to pay for the DWI programs?

SENATOR BLAISDELL: Well the DWI program, I believe, costs every individual around \$250, it may be more now, it depends. It is done through some of the different hospitals that are assigned by the Department of Safety. There is one in each area, I believe. It is

accessible to the people. Whether the state picks up any, I believe that they are responsible for that \$250. The state, I believe, doesn't pick up any of it at all, except the cost of running it, but that cost of \$250 is what pays for the cost. By the way, it is done on weekends.

Senator Podles moved to have SB 405 an act relative to driver attitude training for repeat and habitual offenders laid on the table.

Adopted.

### LAID ON THE TABLE

SB 405 an act relative to driver attitude training for repeat and habitual offenders is laid on the table.

**SB 407-FN**, an act relative to the acceptance of credit cards for motor vehicle related offenses by clerks of court and bail commissioners. Transportation committee. Ought to Pass with Amendment. Senator Currier for the committee.

4838L

### Amendment to SB 407-FN

Amend the bill by replacing section 1 with the following:

1 Motor Vehicle Fines Paid by Credit Card. Amend RSA 260:23 to read as follows:

260:23 [Disposition of] **Motor Vehicle Receipts**. All fees, fines and forfeitures received by any person under the provisions of any laws of the state relative to the use and driving of vehicles shall be paid to the [department] **state** within 14 days after the receipt thereof; and]. **The department may, if it finds it to be financially neutral or beneficial to the state and administratively feasible, accept credit cards or debit cards as the means of paying fees, fines or other charges owed to the department. The department may add on to any fees, fines or charges any transaction costs charged by the credit card or debit card company or bank. For the purposes of this section "debit card" means any plastic card issued by a bank or company for use at automatic teller machines. All moneys received by the department shall be paid at least monthly to the state treasurer.**

SENATOR CURRIER: The amendment is on page seven of your calendar today. The original bill dealt with allowing the commissioner of safety to authorize the use of credit cards for the payment of fines and fees and so forth. The amendment specifically deals with giving the authority to the commissioner in the department to utilize credit cards if it finds it to be financially neutral or beneficial to

the state and administratively feasible to accept credit cards or debit cards as a means of paying fees, fines and other charges owed to the department.

Committee amendment adopted.

Ordered to third reading.

**SB 412-FN-L**, an act relative to signage by nonprofit organizations in zoned commercial or industrial areas. Transportation committee. Ought to Pass with Amendment. Senator Currier for the committee.

**4839L**

### **Amendment to SB 412-FN-LOCAL**

Amend the bill by inserting after section 2 the following and re-numbering section 3 to read as 4.

3 New Section; Exemption Added. Amend RSA 236 by inserting after section 71 the following new section:

236:71-a Nonprofit Organization Exemption. Nothing in this chapter shall preclude nonprofit organizations from temporarily erecting an advertising device for the purpose of promoting an event or activity.

**SENATOR CURRIER:** The guts of the amendment are basically on the top of page eight not page seven. During the testimony a lot of the hearing alluded to a lot of the problems that charitable and non-profitable organizations were having regarding signage on state highways, more or less secondary highways, not the interstates with regard to welcoming home the troops or specific charitable events such as a hospital bazaar or hospital fair or county fair and so forth. What this basically does is, to put an exemption into the statute so that, it states in the amendment, that nothing in this chapter which is the chapter referring into advertising devices, which the state department of transportation enforces, that nothing in this chapter shall preclude nonprofit organizations from temporarily erecting an advertising device for the purpose of promoting any event or activity.

**SENATOR NELSON:** Senator Currier, I just want to make sure that I understood everything correctly. Down in the Nashua area, would you believe, that the Boy Scouts are on the highway and ran into a really large problem because they put up a temporary sign out there saying 'coffee and donuts' over the holiday weekend, you know how the Boy Scouts do that? They were told that state law did not allow it. I want to make sure that I am understanding that now what you have written into law in this amendment is going to allow them,

nonprofits, like the Boy Scouts, to put a temporary sign out and the department of transportation won't go down and revoke their right to do it?

SENATOR CURRIER: This is correct, Senator. What this basically does, it exempts nonprofit organizations from any provisions of those advertising, so that they can temporarily erect signs. During Desert Storm there were many veterans organizations and other organizations across the state that were putting up banners of various sizes and nature dealing with, you know, support the troops and then when they were coming home, welcoming them home. Several in testimony at the hearing, several of those organizations were told by the state department of transportation to remove those signs because they were in violation of the statute. This here is an attempt to address that particular issue.

SENATOR NELSON: This is new language then?

SENATOR CURRIER: This is a new paragraph exempting that.

SENATOR NELSON: Thank you, Senator, for doing that.

SENATOR PODLES: Senator Currier, as I understand a nonprofit organization is an organization that has an exemption under 501:C. That is the federal law. So the childrens trust fund is under this 501:C. Could I ever put up a sign and say something about contributing to the childrens trust fund, I can hold that up?

SENATOR CURRIER: My understanding of the way that the statute is now written, that group, that trust could then put up a sign on a state highway for the purpose of temporarily advertising . . .

SENATOR PODLES: Temporarily?

SENATOR CURRIER: Yes, temporarily. It is only a temporary time. For the purpose of advertising an event or an activity like a fund drive or a welcoming home parade or anything like a fair or things of that nature.

SENATOR RUSSMAN: I was just curious that when I travel to Senator Nelson's district for one of her bingo or monte carlo nights, what will happen in terms of that as far as the signage goes, is that going to be okay?

SENATOR CURRIER: As far as those monte carlo nights or bingo nights or jet ski race nights, are going to be advertised and they were nonprofit organizations, then they would be allowed to put up a sign on the state highway. Part of the problem here is that most of these signs are in the area of the downtown areas of the cities and towns and that is where these signs go up. The state highway sys-

tem has jurisdiction over it even though they may have an impact agreement, a compact agreement, excuse me. The thing is that the state highway department has come in and told these organizations many times to take the signs down.

**SENATOR COLANTUONO:** Senator Currier, just to make sure that I understand the bill correctly, I understand the amendment on page 8 only applies to temporary signs, but I am reading the language of the basic bill which seems to suggest that the words 'advertising devices now shall not include any device erected or maintained by a nonprofit organization'. I assume that means permanently. So are we changing the law, are we exempting permanent signs owned and maintained by nonprofits?

**SENATOR CURRIER:** Repeat the question one more time.

**SENATOR COLANTUONO:** Under the main part of the bill, section one, paragraph one, lines 10-12. Are we now exempting advertising devices owned and maintained by all nonprofits as long as they are zoned commercial or industrial areas?

Recess.

Out of recess.

Senator Heath moved that we have SB 412-L an act relative to signage by nonprofit organizations in zoned commercial or industrial areas laid on the table.

Adopted.

### LAID ON THE TABLE

SB 412 an act relative to signage by nonprofit organizations in zoned commercial or industrial areas is laid on the table.

**SB 413-FN**, an act allowing nonprofit organizations to use informational signs on certain highways. Transportation committee. Ought to Pass. Senator Heath for the committee.

**SENATOR HEATH:** This legislation simply allows an addition to informational signage that can be permitted if the agency believes that it is truly informational signage for nonprofits. That would essentially be like meetings of the Kiwanis or the Rotary or the Fraternal organizations like the Masonic lodges or Churches to have their signs out there to let people know when they meet and things of that nature. These are permanent signs as opposed to the last bill, but they are for nonprofit organizations and they do the same as they now allow other informational signs. I would urge you to go with the committee recommendation.

**SENATOR DISNARD:** Senator Heath, does this mean since you have already made an announcement about your future, that some-

one running for your seat can put a sign up on the highway saying elect so-and-so, they would be a nonprofit organization?

SENATOR HEATH: Unfortunately, Senator Disnard, this doesn't apply to political signs. I don't know if we will ever get the arbitrariness out of the enforcement of the present laws in political signs when a candidate such as myself comes out opposed to the second five percent pay raise and the highway crews go out and tear out my signs and leave my opponents signs on a state owned island at the intersection of the two main highways in my district. I don't think it would address that, I wish it would, but I guess we will have to wait for fairer times to prevail.

Adopted.

Ordered to third reading.

**SB 422-FN**, an act requiring the division of motor vehicles to make notification of license revocation or suspension by certified mail. Transportation committee. Inexpedient to Legislate. Senator Pressly for the committee.

SENATOR PRESSLY: The committee felt that this problem really rests with the individual motorist. The problem appears to arise when an individual moves their residence and does not notify the department. Because of the fiscal amount involved, the committee felt that the responsibility should rest with the individual to notify the department and not place an added expense or burden on the department.

SENATOR COLANTUONO: I just noticed this bill and I have had some experience with this in my own practice. I would just like to point out, and I am not trying to urge the defeat of the motion or anything like that. If we had more funds I probably would, but I recognize the situation we are in. Right now under present law, if an insurance company wants to cancel someone's insurance policy, if it's still the same as when I had the case several years ago, they're required to send it by certified mail. We don't give the same courtesy to a citizen who is having a license suspended or revoked. If they don't get it for some reason, they can get arrested and prosecuted for driving without a license, and that has led to a lot of inequities and a lot of citizens who have criminal records now and have lost their licenses and so forth. The law for driving after suspension requires that you drive knowingly. The only way to make sure that a citizen knows that they are under suspension or revocation when that comes from the department is to make sure that they sign a slip and actually get the mail. I hope that someday, that this kind of bill can be enacted for the safety and the rights of our citizens.

Committee report adopted.

**SB 432-FN**, an act relative to motorcycle noise level limits and imposing fines and penalties for violations of those limits. Transportation committee. Inexpedient to Legislate. Senator Currier for the committee.

**SENATOR CURRIER:** I guess I am talking about the motorcycle noise bill which has been recommended inexpedient to legislate. I understand that there may be a motion after I sit down to table this so I will be brief. There were some discrepancies as to the enforcement aspects of the motor vehicle inspection regulations. Actually, I think, the department was a little embarrassed when two of the inspection stations that spoke against this bill were referring to a set of regulations that in fact were outdated and outmoded because they had adopted a new set of regulations that evidently hasn't been sent to the inspection stations. My understanding, is that some additional information has come forth and the committee is going to, I believe, go along with the tabling motion that will follow.

Senator Heath moved to have **SB 432-FN** an act relative to motorcycle noise level limits and imposing fines and penalties for violations of those limits laid on the table.

Adopted.

### **LAID ON THE TABLE**

**SB 432-FN** an act relative to motorcycle noise level limits and imposing fines and penalties for violations of those limits is laid on the table.

**SB 433-FN-L**, an act relative to the registration and equipment standards of motor vehicles known as street rods. Transportation committee. Ought to Pass with Amendment. Cohen for the committee.

**4592L**

### **Amendment to SB 433-FN-LOCAL**

Amend the bill by replacing all after the enacting clause with the following:

1 New Section; Definition; Street Rod. Amend RSA 259 by inserting after section 106 the following new section:

259:106-a Street Rod. "Street rod" shall mean a vehicle, the body and frame of which were manufactured prior to the year 1949 and which has been modified for safe road use, or a replica thereof which has also been modified for safe road use. For purposes of this section, the word "modified" means, but is not limited to, a substantial

and material alteration or replacement of the engine, drive-train, suspension or brake system or alteration of the body which may be chopped, channelled, sectioned, filled or otherwise changed dimensionally from the original manufactured body. Any such modification may be made only if said modification equals, improves or enhances the safety aspects of the original equipment so modified. For purposes of this section, the word "replica" means a body or frame manufactured after the year 1949 and which resembles that of the original vehicle and which retains the basic style and dimensions as originally manufactured and whose major components such as grill shell, hood, or doors are readily interchangeable with the original pre-1949 component.

2 New Sections; Number Plates for Vehicles Registered as Street Rods; Vehicle Identification Numbers. Amend RSA 261 by inserting after section 89-a the following new sections:

261:89-b Number Plates for Vehicles Registered as Street Rods.

I. The director is hereby authorized to design and to issue under such rules, as he shall deem appropriate, distinctive number plates to be used on motor vehicles registered as street rods. Such plates shall be in lieu of other number plates and shall be issued only upon receipt of a duly executed certificate verifying that the subject vehicle is in fact a street rod as defined in RSA 259:106-a. The director is hereby authorized to issue a street rod vanity plate as provided by RSA 261:89.

II. A special fee in the amount of \$25 shall be paid for the certificate of verification. This special fee shall be in addition to the regular motor vehicle registration fee as prescribed by law for the particular vehicle being registered, and any number plate manufacturing fee or fees otherwise required by law for the particular vehicle. All special fees collected shall be paid to the state treasurer and credited to the driver training fund established in RSA 263:52. A vehicle which is registered as a street rod, regardless of the year of manufacture of said vehicle, shall be assessed a municipal permit fee in the amount of \$1 per month of registration, with a minimum fee of \$5. This fee shall be in lieu of any other municipal permit fee. For purposes of this section and that of vehicle registration, the year of manufacture of a street rod is deemed to be the year of manufacture of the body. In the event the body is a replica as defined by RSA 259:106-a, then the year of manufacture is deemed to be the model year of the body so replicated.

III. The certificate of verification required by this section shall be documented by an instrument designed and issued by the director. Any authorized highway enforcement officer or any individual who is authorized by the director to perform motor vehicle inspections provided by RSA 266:1, V is hereby authorized to perform the



verification and certification required by this section. A certificate of verification issued under this section shall be transferable in the event the vehicle described by such certificate is sold or the ownership is otherwise transferred or conveyed.

IV. Pursuant to RSA 261:75, a vehicle duly registered as a street rod shall be issued one number plate of the design as set forth in this section. Such plate shall be attached in a conspicuous place on the rear of the vehicle.

261:89-c Vehicle Identification Number for Street Rods. The vehicle identification number or "VIN" for a street rod shall be the number stamped on the frame of the vehicle, or if no such number, as established pursuant to RSA 261:22, I.

3 New Subdivision; Equipment Required of Street Rods. Amend RSA 266 by adding after section 112 the following new subdivision:

#### Street Rods

##### 266:113 Equipment Required of Street Rods.

I. A vehicle registered as a street rod shall be equipped as prescribed by RSA 266 and state of New Hampshire official inspection station rules adopted pursuant to RSA 541-A, as they may be applicable to vehicles whose model year is prior to the year 1949.

II. Notwithstanding paragraph I, street rods shall be equipped with the following:

- (a) Hydraulic service brakes on all wheels.
- (b) Sealed beam or halogen headlamps.
- (c) Seat belts for all passengers.
- (d) Turn signal lamps and switch.
- (e) Safety glass or Lexan.
- (f) Electric or vacuum windshield wiper located in front of the driver.
- (g) Parking brake operating on at least 2 wheels on the same axle.

III. Notwithstanding the requirements of this subdivision, bumpers, fenders, and hoods shall be optional equipment. Exhaust systems discharging along the side of the vehicle shall be allowed, provided the exhaust discharge point is to the rear of the rear edge of the front door and such system shall exit exhaust gas away from the vehicle.

IV. The ground clearance for a street rod shall be such that the vehicle shall be able to be in motion and functional while on its 4 rims on a flat surface, and no part of the suspension, steering or chassis shall touch that surface. The director may adopt rules, pursuant to RSA 541-A, as are necessary to implement the provisions of this subdivision.

4 Effective Date. This act shall take effect January 1, 1993.

### AMENDED ANALYSIS

This bill allows persons who drive street rods to obtain distinctive number plates from the director of motor vehicles upon payment of a \$25 fee and presentation of a duly executed certificate which verifies the vehicle as a street rod.

This bill requires that street rods be equipped with certain items. This bill defines street rods as vehicles, the bodies and frames of which were manufactured prior to the year 1949, or which include replicas of bodies or frames manufactured prior to 1949, and which have been modified for safe road use.

Any vehicle registered as a street rod shall be assessed a minimum municipal permit fee of \$5.

SENATOR COHEN: Street rods are a unique class of vehicle. Right now they are not treated as such. Town clerks and people doing the registration have a difficult time sometimes because it's unclear as to what the car is, for example, if it's modified. This makes it easier for the town clerks. It increases the efficiency of the vehicle registration process, the bill requires and improves safety equipment on street rods. If a car has a street rod designation and has it stamped on the license as this would require, then you know that the vehicle has hydraulic brakes and sealed beam or halogen headlamps, seat belts for passengers, turn signal lamps. It helps the organizations, there are a lot of street rod organizations in the state of New Hampshire which raise a lot of funds for charitable organizations and this will help them out. This will also help preserve that classic bit of americana which is not street rods. They are not making anymore of them. As I say, it won't cost the state anything. It generates a flow of money into the communities and makes life easier for the town clerks. The committee unanimously recommended ought to pass.

Committee amendment adopted.

Ordered to third reading.

Recess.

Out of recess.

**SB 444**, an act relative to the definition of ski craft. Transportation committee. Ought to Pass. Senator Currier for the committee.

SENATOR CARRIER: For the record, let me say that I own a 24' pontoon boat, a 10' jet powered boat, I am Vice President of the Lake Protection Association of the lake where I have a summer home and I am a 24 year veteran of the United States Coast Guard. I agreed to sponsor SB 444 relative to the definition of ski craft, because I think it was a reasonable and fair compromise to the jet ski issue. It is important to point out right away that this bill does not

change the law that is on the books regarding single operated jet skis that have been banned or restricted either by the department of safety hearings process or by statute, nor will it prevent people from requesting a hearing to ban single person jet skis at any time in the future. There are currently three types of water craft on the market, one is the single operator jet ski. This is the so-called problem jet ski. It is operated from a standing position. It is a craft that people who live on the lakes have had problems with when operators would jump the waves and ride around in circles. When the craft comes out of the water, it causes all the noise that the people find so offensive. These jet skis are banned or restricted on over 90 lakes in the state of New Hampshire. There is also a three seater water craft available. It is a family oriented craft and I understand that many people use it for fishing as well. There will probably be other testimony on the floor here in refuting this that shows the sensational advertising that is used by what I call 'tabloid type publications' that indicated more sensationalism in the marketing of this device. I don't condone the marketing policies of the companies that manufacture these things, but I do condone the responsible use of these as a water craft. There are a few different designs to the craft. Some look very much like the small boat where you sit side by side. Others are designed to be seated one behind the other much like a snowmobile. These water crafts are legal and are not restricted on any lakes where motor boats are allowed. These boats float and are not required any propelling to stand upright and balance like you would on a very loud excessive muffler motorcycle similar to the one that Senator Russman rides. There is also a craft which if you saw, like the three seater craft, it would be very difficult to tell the difference between the two. We had many brochures and photographs of the various water crafts along with the appropriate bikini individuals promoting the sale of these items shown to us in the committee, and it was very difficult to distinguish between the two seater and the three seater. There are some that look more like a motorcycle that floats that are displayed in a lot of the other publications that I referred to a few minutes ago. The three seater is not a thrill craft. We heard testimony during the hearing from families that purchased this craft because it is relatively inexpensive compared to larger boats and because it is easy and safe to operate. This was a woman who testified who had not really had a lot of other major boating experience. It does not come out of the water like the single operated jet. It is considered a boat just like a three seater craft. As a matter of fact, many of the two seaters actually can hold three people depending on their weight. Interestingly enough, this particular device here which is a ten foot craft that I have alluded to that I have at my summer home is registered in the state of New Hampshire as

a boat, but it is a jet ski. That is regulated as a three passenger jet ski and it will hold three passengers or 480 lbs, whichever comes first. So if I am a 480 lb. bimbo, then it's only one of me, but if it's three or two like Roger Heath and I, then only the two of us could go in it then. So instead of two crafted jet skis, because they are regulated by the U.S. Coast Guard depending on weight. What this bill does is define a ski craft to mean "any motorized private boat which is less than 13' in length and is capable of exceeding a speed of 20 mph and is designed with a capacity to carry only one person while in operation". With this definition the two seater craft which is much more like the three seater craft than the single operator craft, can be used on the lakes in New Hampshire. I think it is important to note that if these two seater water crafts are allowed on the lakes along with the other boats, it will certainly have an impact on the hearing process. Many of the individuals who come to these hearings when a petition has been filed by the department of safety to close a lake to the ski craft owned two seater water craft. They feel that they are being treated unfairly and to be considered in the same class as a jet ski operator, and I have to say that I agree with them and that was one of the reasons that I sponsored this bill. I also have to say that I think that this issue is one of public access. Some of us just have different philosophies on who should be able to enjoy our lakes. I think our lakes are for everyone to use, not just those who are affluent enough to either own waterfront property or to own an expensive boat. There is also an issue of enforcement. If anyone is violating boating laws on the lakes and the waterways in New Hampshire, whether they are on a jet ski or whether they are on any other kind of boat, the department of safety who patrols our waterways should hold them accountable. Our lakes are for everyone to use in a safe and reasonable manner. I want to conclude by saying that I don't believe that this is a foot in the door by those who support this bill to repeal the jet ski law and get the thrill craft of jet skis back on our lakes, that is not the intent. There is a gray area here dealing with the two and the three individual water craft that is at issue here and nothing more. I guess that concludes my report, Mr. President.

SENATOR PODLES: Senator Currier, I have several questions to ask you if you could help me to understand this. Are you telling us that the two seater floats?

SENATOR CURRIER: Yes, I am.

SENATOR PODLES: So in other words, it doesn't make the same noise as the jet ski, the one that you sort of almost like stand on it and it's very bumpy on the water?

SENATOR CURRIER: Senator Podles, the two and three passenger jet skis which is pictured here without anyone on it. This one here that has a picture of two people on it, the people use these, believe it or not, they use it to go fishing. The jet ski is much like a snowmobile. In fact, it's stable and it floats. The one passenger one, in order to stay on the one passenger ski, you have to get into the water and climb up on it and go, it has to be propelled. I have seen somebody tie one of these water crafts right near the dock, they get onto it and drive away without getting wet. You don't have to get wet. It floats like a boat unlike the one man jet ski. This one's exhaust is into the water, whereas the jet ski exhaust from the side so that when you come out of the water that noise that you hear is not an exhaust from the engine, it is the actual whining noise of the water not going through the motor that propels the engine.

SENATOR PODLES: The requirements of the other jet skis that we discussed in the last session was 30' from the shore. Is this going to have that kind of requirement?

SENATOR CURRIER: I think that you are referring to 300' from the shore.

SENATOR PODLES: It is 300' from the shore?

SENATOR CURRIER: Yes.

SENATOR PODLES: Okay, is this one of the requirements for this?

SENATOR CURRIER: A two passenger boat and a three passenger one, no.

SENATOR PODLES: So they will be all over the water, all over the lake?

SENATOR CURRIER: They will be regulated. I emphasize this. They will be regulated just like any other water craft, any other boat that is on a lake. I mean, Senator, a lot of the problems that are caused by the jet skis at this particular junction are enforcement problems that we have to deal with enforcing the laws that we have on the books. We don't have enough marine patrol out there to actually handle the situation. So we have reverted to banning the problem instead of dealing with the problem.

SENATOR COHEN: Senator Currier, you said in your testimony that this is not intended to be a foot-in-the-door with regard to ski craft and jet skis. I noticed in the bill here, it changes, it deletes what it now says in the law 'not more than the operator and one other'. Now if this is not intended to be a foot-in-the-door, what is the compelling reason for deleting that phrase 'not more than the operator and one other'? Why not let that definition stand?

SENATOR CURRIER: Because the original jet ski is a one passenger. They were, I think, prevalent at one particular junction during the manufacturing process, a two passenger stand-up jet ski. That has changed. They are basically a one passenger. We are trying to get it confined to that one passenger device that is not in fact the boat. The one that you have to get into the water and stand up on.

SENATOR COHEN: Thank you. So it seems to me then that you really are trying to, it sounds like a foot-in-the-door really.

SENATOR CURRIER: Senator, I testified at two lake hearings against jet skis. I mean I guess I am on both sides of this issue. It was Deering Reservoir and . . . but I am talking specifically about jet skis and the lakes that we were referring to was a lake that was a 150-250 acre lake, that it was ridiculous to have any boats that were probably any bigger than a 10-20 footer with a small horsepower motor. I mean you have to be reasonable about what you are dealing with in terms of banning different things on various lakes in terms of size and everything else just like they do in the hearing process.

SENATOR COHEN: I guess I haven't heard a compelling reason why to change the definition here. It is a question still.

SENATOR CURRIER: In terms of everything that I have said, then you need to vote against the motion if that is the case, Senator.

SENATOR DISNARD: Senator Currier, I don't own a boat. The only thing that I know about is how to catch a fish with a fly in a stream. But however, I had a respected attorney call me last evening from the Sunapee area and his opinion is that if this bill passes as outlined here, with the changes, it could put in jeopardy and in litigation, all the lakes that have been involved with the ski and abolition or the refusal of allowing skis on there. I'm wondering if this might be true and if it should be recommitted and have the committee find out. I hate to vote for something one way or the other and then find out what I did has caused more problems.

SENATOR HEATH: Senator Disnard, this is not a legal question, it's a curiosity question. Is your respected attorney advisor a member of one of the associations that are lobbying on this bill?

SENATOR DISNARD: I don't know, but he is a respected attorney for all the lakes and the group of the state, for the protection of the lakes and the protection of the environment and the clear water and I guess I would have to say yes, he does have an interest in the lakes.

SENATOR HEATH: Thank you.

SENATOR MCLANE: It's been a long history, this battle about jet skis. It started about eight years ago when a man came to the lakes association and said that he was selling his property on lake Winni-

pesaukee because of a neighbor next door who drove a jet ski, morning, noon and night. He finally swam over in the middle of the night and pulled out the spark plugs and the kid just about went out of his mind. That is how it all started. With people all over this state ready to go up in smoke over this whining sound noise. The only fun with jet skis is to go around and around and around in circles and drive your neighbors mad. We have worked on this for six years. The first bill that we proposed would have closed all lakes for jet skis and then had public hearings to open them. We started with the Audubon Society that was upset with these air driven boats that could go up and look at birds in birds nest, was the quote selling these. The fishermen were very concerned, because if you have ever seen a fisherman trying to be quiet at four in the morning when the neighborhood kid has his jet ski out, you would know that it isn't good for fishing. Hundreds of people came to testify on these bills and I had personally over 900 letters about the jet ski issue. People care very deeply. We finally, after four and half years, made a compromise. This is the compromise: that of our 978 lakes that are over ten acres in New Hampshire, and therefor belong to all of us, the lakes under 75 acres are closed to jet skis. Six hundred and eighty-eight lakes are closed. The rest of the lakes, 290 of those, they have had public hearings to either close or open them. Fifty-five hearings in 1989, 35 hearings in 1990 and only five last year. My point is that the bill as it is, is working. We cut off the coves, we made the jet skis go 300' out and they are in the middle of the lake and they don't bother anyone 300' out. No it is honestly true that I have not once been bothered by jet skis in the last couple of years. They don't come close to shore and because they are regulated. Therefore, the number of violations have gone down from over 400 to now under 200 and the problem was solved. Now comes forward, first a boat that was advertised as buy this jet boat because it doesn't conform with the law. That was the three man craft that Senator Currier is referring too. Last year, I put in a bill to try and stop that three man craft, that bill failed. So the law is now a two man craft or a one man craft is under the jet ski regulation. The 300' not in the coves, not in the lakes that have had hearings that are closed and not in the small lakes. If this bill passes which divides more than in half the number of jet skis that would be covered by the law, and if this bill passes, all of those lakes and all of those areas would be open to a craft that I can't see the difference between that and a jet ski. The information is that there are about 2,000 jet skis that are registered and 70 percent of them are two people crafts. All of you received a lot of telephone calls last night. The first that anyone knew of it was yesterday afternoon. That is why I decided that we would not postpone this bill. I think that your phones would have been ringing off the hook, because there are 900

people that we know that are furious about this issue. My suggestion is that if the industry comes in and gets a bill put forward that changes the definition of jet skis and so that 70 percent of them that are now registered are now all over our lakes that we have gone through all of this process about, that you are going to have some very, very mad people.

SENATOR HEATH: Mr. President, in the 14 years that I have worked in the legislative body I have represented, and in the House, probably the most shoreline of an individual, 76 miles in Moultonboro alone and in the Senate certainly a close second by Senator Fraser, more shoreline than any member of the House and Senate. In those years I have had to fight hard to divide between competitive interest on the lake. It is always a tough decision because there are always people who want to do different activities on different parts of the lake. I have been accused by both sides of almost all of the issues, whether it is moorings, which I initiated, and rafting legislation, which I initiated, and some clean water things and so on. I have had both sides angry at me at one time or another. I have had shoreline owners praise me and I have had them wanting my head. I have had the same thing happen to me with the marine dealers. When I get a phone call one day talking about jet skis, I didn't know what they were talking about. I had never saw one or I had never heard one. I got about 12 more phone calls. One day I was driving by Squam lake and I saw one of these and I stopped and I got out of the car and listened and watched. It was a little buzz bomb going around in circles and making a lot of noise, jumping its own wake. One of the complaints that I had heard was that these things go all day. Well flash forward, I found out what the problem was. When they cavitate, when they come out of the water, they scream and make an irritating noise and they are sort of a teenage craft. The teenager says mom can I use the jet ski, and she says yes, but don't go out of sight. So all afternoon the kid goes around and around in front of someone's house, it is very irritating. This piece of legislation comes through this body dealing with jet skis. The first year that we addressed it I stood here and asked to put a complete ban on them for Squam lake, that is still the standing and largest ban on jet skis that this body has ever passed, the second largest lake in the state. But, the industry came in knowing what happened in New Hampshire, knowing what was happening in other states and they knew that they had a problem. They redesigned these boats. They quieted them down, they expanded them, they got rid of some of the jumping qualities of them and they responded. We now have an higher definition, unless you are just involved in an emotional demolition derby about anything that has handlebars. That is what happened.



So where we are at now, is unfortunately, and something that makes me quite angry, is a lobby that has gotten so emotionally engaged that it has forgotten the facts or misrepresented it, I would like to think the former, I suspect the latter. So I am getting all of these phone calls from these highly charged people and telegrams. Now here is a telegram, it says reference bill 444, we smell the fumes and the sounds of jet skis in this, please be wary, Reno, Nevada. You know, cut me some slack . . . this is a person that hasn't read the bill, doesn't know the arguments, doesn't understand what the bill does and doesn't do. The ones that I have talked to said that this is going to wipe out all the jet ski legislation. That is frankly, and there is not a nicer word for it, crap. It isn't going to wipe out. Those buzz bombs are banned in certain areas and those bans will stand. This is a different craft, because it shares handle bars, it is no different than the others, but it is quieter and it causes less wake than hydroplanes and a lot of other crafts. I am a little angry as I look through my list of phone calls. This is people on Beacon Hill that should be attending their geraniums, who don't live in the state of New Hampshire, who don't know the issue, didn't come to the hearing, who got an emotional phone call from somebody to get ahold of Senator Heath and crank him around on this because they are going to turn all of the boats lose and your summer is going to be ruined. These are people who have homes, they call them cottages, they are three story victorian places on Squam Lake that you and I will never afford. This is the rich of Philadelphia and Boston calling in shots on something that they don't know and they are really too tired and too busy doing their things in their other homes in Reno and Philadelphia and Boston to learn the issue. I guess I am a little angry that they filled up my recorder. I tried to leave a message for my wife on it and the thing was crammed full of these emotional things of people who didn't even know the issue. I think Senator McLane said something that is a little telling about some of the people who are engaged in this battle. The first engagement was a person who went over and handled it by stealing property of another person. That shows me an attitude. There is an engagement here between the privileged who are the shoreline owners who have fought every kind of access to anybody who isn't in special clothing and in an old town canoe looking at loons. They have fought every kind of access for the blue collar worker, the guy who is getting grease in his eye when he is changing your oil and he is bagging your groceries, and he is carrying it out, and he is shoveling the sand out on the icy roads. They tell me that they don't want the riffraff on their lake. Well it isn't their lake, it is our lake, the people in the state of New Hampshire. This is a somewhat portable craft and this underlies part of their emotional disturbance over this, because it is a craft that might be on their lake. Well

I didn't get elected by them to protect their lake, it is our lake and I would ask you to leave it in the hands of the people of the state of New Hampshire. If you are going to ban a class of boats, ban across the line. These people have their launches and their old leaky chris-crafts and their penyams and they sit there and there is an oil ring around the back of them in their boat house and they don't want something with handlebars on there, because it might come from the riffraff, the people who work and live year round in the state of New Hampshire. I would ask you to consider that and to consider that the lakes issues are delicate, but we ought to get the emotional reaction out of it. If these people want to get enraged, we have hearings, these people didn't show up at the hearings. This is not a bill that has gone undiscussed, this bill has been kicked around for two years and if they want to learn the issues, let them come up and talk to us about them, but don't throw everybody off of the lake because they have a wedge in getting some of these people who can't afford the penyams and the chris-crafts on the lake. Thank you.

SENATOR MCLANE: Senator Heath, I think there is a very important point here that you have somewhat slid over. You talk about a new craft. As I look at the pictures of these crafts and see them, jumping around in the water, I might add, I have read that they cost about \$5,000. What we haven't talked about are the 2,000 already registered jet skis in this state of which 70 percent are two seaters. The law that you have written would include those as well. If you try and tell me that these new ones are less than 83 decibels and are quiet and beautiful, what happens to those 1,000 two seater presently licensed jet skis that can't go 300' from shore?

SENATOR HEATH: I am not entirely sure of your question. It sounded more like a speech, but let me start in by saying that I don't believe that they are beautiful. I don't believe that most of the folks on the lake think they are beautiful. A canoe is my kind of a beautiful boat.

SENATOR MCLANE: That was not my question.

SENATOR HEATH: What happened is that there are two kinds of boats that we generally call jet skis, one is single person, usually with a flexible handle so that if they don't have it moving forward it will sink with the person on it and it is used to jump and play games and jump wakes and when it goes up in the air it makes a noise. You couldn't do that with two people if the craft was capable of it unless the people have practiced and practiced the jump in unison and the back one would probably go off of the back. It is a different craft and it doesn't disturb the peace like the one that we intended to ban and if it allows them in, that is fine because we are talking about an

activity, not a look or a name. We are talking about an activity on this lake or that lake. Those bans remain for the activity that we both agree should be banned in certain areas.

SENATOR MCLANE: Mr. President, he didn't answer my question, but I will leave it, because I think that we need to get on.

SENATOR HOLLINGWORTH: Senator Heath, because I am so attuned to decibels these days, do we have laws that say what levels they can be, of boats of any kind or on the lakes, is there a law that says that?

SENATOR HEATH: Yes, there are laws on the books about decibels. Although it is a difficult science, they take them to an isolated area with a certain kind of background so that they can get a consistent reading and test them at a certain speed passing a certain distance.

SENATOR HOLLINGWORTH: Would that law make sure that those other loud boats, if they are two seaters, they would be covered under that law?

SENATOR HEATH: They absolutely would be covered, as would all boats on the lake.

SENATOR SHAHEEN: I would like to make an attempt at responding to Senator McLane's question, because it is my understanding and I think that Doug Patch from the department of safety acknowledged this yesterday in speaking to him that the jet skis, the one person stand up, 2,000 that are registered will still be banned on the lakes. This will not affect those at all. The second point that I would like to say and I also had a number of calls from people last night that were concerned about this issue. A number of those tried to make this an environmental issue. I guess that is the question that I would raise, because I don't think that this is an environmental issue. I have a report that was done admittedly by the lobbyist that is supporting this issue, but I have to say that I think it has credibility because it was done by a neighbor of mine who is a resident of the town of Madbury, Tom Bellerose, who is also a professor at UNH whose credibility and integrity are impeccable, and if he says that this is what he believes, then I absolutely believe that that is the way that it is. To quote from this he says "as personal water craft (PWC) use is being severely regulated in New Hampshire compared to other boat classes, there does not appear to be a clear or definite environmental reason why they should be". In my mind, that means that the issue is very much what Senator Heath outlined. This is not an issue of what decimates the lakes and affects the waterfowl and the fish of the lakes, this is really an issue of who

we are going to allow on our lakes and who we are not. I guess my feeling is we have got to make lakes available within certain limits to anyone who is able to use them. The other thing that I would just like to add is I don't own a jet ski and I probably never will. I don't live on a lake, but I have been to Disney World with my kids and we loved riding on these boats down at Disney World and the boats that we ride in at Disney World aren't the jet skis that everyone is concerned about that jump out of the water, they are the two people craft that you can ride around and they sort of go put-put and the kids have a great time. It seems to me that this water craft that we are talking about is not going to raise the kind of concerns that the jet skis that have been banned already and will continue to be banned from the lakes have raised for so many years.

SENATOR MCLANE: I don't mean to prolong this, but I just have to make one point: I won't discuss who is on the lake and who isn't. There are 2,000 jet skis now in New Hampshire, 70 percent of those have two people on them, so that when you pass this law, it is not dealing with new boats. It is dealing with a large number of crafts that are two people boats now. That is what I think that you are missing. You said that it was 2,000 crafts that would be still under the law and that is not true. Seventy percent of the craft that are not on the small lakes now and are 300' off shore would fall out of the definition in this bill and be allowed.

SENATOR SHAHEEN: Senator McLane, if I could just get a clarification of that. When we are talking about two seaters, we are not necessarily talking about a jet ski that would hold two people, we are talking about a machine as Senator Currier outlined earlier that is actually made for two people. Are you trying to say that that definition is 70 percent of what is registered now, because that is not my understanding?

SENATOR MCLANE: That is the truth. I have tried this for two days. There are a large number of crafts now. Seventy percent was the number used at the hearing and the industry did not object to that figure. That number of crafts are now two seaters. So if you pass this bill they will be considered boats and not jet skis and you are going to have havoc on your lakes.

SENATOR CURRIER: Senator McLane, you were not present at the hearing, so whatever you heard in terms of the 70 percent and the 2,000 is hearsay, I would assume. My question is, what is the source of this information regarding this 70 percent of 2,000 and would you swear to that under oath?

SENATOR MCLANE: My lawyer, Senator Colantuono, tells me that is an inappropriate question.

SENATOR OLESON: I will tell you frankly, my colleagues, if you have questions about the bill and how it affects the people on the lake, I wish you would refer them to Senator Currier or Senator Heath. The simple thing is that where I come from, we have two things going for us and that is snow drifts and black flies. These people are from the lakes region and these are the ones that will have to face up to what the repercussions will be if this bill passes or does not pass. To me the bill what it did was try to get a handle on a definition on something which no doubt is causing a certain disturbance in the state of New Hampshire. I never saw such a small bill cause this much discussion and disruption in my life. But like I said, it is the small things that are the most irritating, like midges and black flies, I guess. We did have a lengthy hearing, well over 20 people were there to testify. It took in most of the morning with the pros and the cons. The vote came out to three to pass and one who would like further information before she voted one way or the other. Myself, Mr. President, I think my job as Chairman of Transportation is to reflect the wishes of my committee, and in this case, my committee voted for the passage of this bill.

SENATOR COLANTUONO: Senator Heath, as someone who doesn't live on a lake, summer on a lake, go to a lake, ride a jet ski, know about jet skis and all that I know is what I heard today. I see this bill as boiling down to one simple question. Senator Shaheen referred to this as not being an environmental issue, but I see the noise question as the environmental question. I see the noise question as being the only important question here, because I understand why the single seaters are banned and I understand because of the noise, and I understand why the three people right now aren't banned, because they don't create noise and I don't know the technical answer as to whether these two seaters create noise or don't create noise. My simple question, and my vote is going to depend on the answer, and anyone else can take a shot at it. If we vote for this bill, will we have a noise problem on lakes which we don't have now?

SENATOR HEATH: You will have no further noise problem, because the two seaters and the three seaters which are essentially the same which is a quiet boat, much more quieter by the way than these long cigarette boats and the hydroplanes and lots and lots of boats that have never been the subject of federal legislation. In fact, it isn't even the decibel on the one man ones that would remain controlled and banned in certain areas, it is the change in the decibel and the high pitch that irritate people, it is not the total decibel count, that isn't very loud compared to a lot of other legal boats. It is the whining and the high pitch and the cavitation that goes on when they leave the water. The two person boat doesn't, it exhausts under

water like the three person boat, there will be no additional sound in the two from the three. The jump in the decibels comes when you move from the two to the one which leaves the water and is exhausted into the air and not into the water.

SENATOR RUSSMAN: To begin with, I am in favor of access to every lake in our state. I think that that should be without bar and at the same time I enjoy actually riding most anything with handle bars and what have you. I think that is a practical matter. Matter of fact, I have ridden a jet ski in the past as well. I represent as you all do, a couple of fellows, one's name is Joe Gagne and another guy named John Huckins. These are two different fellows who live in Kingston and they work down at the new plant and they like to come home at 3-3:30 and they trailer their boats down to the lake and they like to take a couple of beers with them and they like to fish. I also represent a lot of other people that don't live on the lakes, but have boats that go there and obviously, we have to be cognizant of out-of-state families that come here as well. Now those people are being driven off the lakes by these types of boats and that access should be there and it should be there in a meaningful manner without any question. I mean if you look at the law as we now have it, it is clear, it's in print here, it says "ski craft and the capacity to carry more than the operator and one other person while in operation". What Senator McLane said is correct. If those have the capability, which I don't know if it is 1,000 or 70 percent, but most of them clearly probably do have that capacity if you sit down on it and the person is behind it and then those people would then become exempt, because the new law talks about . . . this is going to change that and do away with not more than one other person to make its capacity to carry only one other person while in operation. In all honesty, they have the capacity to carry two people while in operation, there is no question about that. At the same time, I think that there is no question, this is in part, an upgrade by the industry. This is all industries trying to get the people to eventually upgrade to a better car or a bigger car. There is no doubt that it is a way to get around a law. It is a way to get people to upgrade, and it is a way to get them to . . . A lot of times you are going to have these two persons or three persons as the newer ones appear to be a little different, one person is going to ride those. They will still be able to jump the waves as they had in the past, they will still be able to do the tricks and frankly, enforcement is a problem, there is no question about that. These boats and matter of fact, the magazine that Senator Colantuono is looking at, you can look at that yourself and see these two examples in there doing the acrobatics and whatnot. The enforcement is difficult. I have talked with Marine Patrol operators and these jet skis can go

where the marine patrol operators can't go. They can go into very shallow water, they can go up these small waterways and those types of things and it's very difficult to apprehend these people. There is a real serious problem. I think that if New Hampshire is going to maintain its image as a place for families to come and enjoy our lakes and spend their money and register their boats up here and take part of our state, then obviously, this is not the way to go. So I would hope that you would vote no on the bill and once and for all, send the message that we are not going to allow say perhaps 1,000 more of these things that have already been banned back on the lakes as it will clearly do, because if you read the statute, you can do it yourself.

SENATOR HEATH: Senator Russman, throughout that, I guess I am a little confused. Is your argument based on environmental concerns or noise concerns or where are you coming from?

SENATOR RUSSMAN: Well, Senator Heath, I am glad that you asked that, because it is on a number of concerns, it is not just on one. I think that there is an argument to be made in each of those areas, quite clearly, but I am not saying to you that it is just one specific thing, because it isn't, it is a variety of things. For the fellow who fishes and wants to enjoy a beer or the family who wants to water ski and not have people cutting across their bow or trying to follow them closely so that they can jump their wakes. Those are families that are out there that are having a problem, perhaps in the areas where they go in very close to shore and they cause a lot of turbulence or sedimentation in the water and stir it up, perhaps that is a problem environmentally, but there are a number of areas and the noise as well.

SENATOR HEATH: I guess I am asking you as a harley rider and a person who has documented the sound of a harley rider, if your objection is to sound, it seems to me that you owe us an explanation. If your objection is environmental, then don't you owe us the fairness of banning all boats that came too close to a fisherman, which by the way you can fish from these boats and it is done. Don't you owe us the fairness of banning all boats that have the equivalent weight or the equivalent sound, I mean why do you take one that looks in this confirmation and all of these others that can do and are occasionally abused in use, and let them go and just put all of your emotional focus on this particular physical confirmation?

SENATOR RUSSMAN: Well, that is a good question and at the same time, I know that we have talked a lot about the fishermen off of these things. I haven't seen any pictures yet of the fishermen fishing from these boats, but I am sure that they must be around,

but when you refer to the motorcycle that is probably a reasonable analogy. Let's take for example, if you had a motorcycle that would only take one person and now you make it so that you can now take two, you are still going to get a lot of people who will ride those as one person. You are still going to have the same problem that you have with the jet ski from two people down to one. The mere fact that you call them a two person, one person is going to drive those in many, many instances, and you are going to have the same problems.

SENATOR HEATH: Senator Russman, would you acknowledge that this is really if you want to use the analogy of the motorcycle, the difference between the screaming high reved trail bike as clearly one seat and is used for jumping and going through the woods and over rough country and has an irritating sound and a nice deep throaty roar, whether there are one person or three on them of a harley like yours, that everybody that has a sense of esthetics loves to hear go putt, putt, putt?

SENATOR RUSSMAN: All american right? No, as a practical matter, I hate to say it, but that is probably not a very good analogy at all. But thank you anyway.

SENATOR HEATH: Why was I afraid that you would say that . . .

SENATOR NELSON: Senator Russman, did I hear you correctly when you talked about families in the state of New Hampshire, something to do with families on the lakes or something? I didn't quite get what you were saying about the families?

SENATOR RUSSMAN: I would be very happy to elaborate on that for you. Basically what I am saying, is that many, many families like to go to a lake and spend the day and water ski and those types of things. When these boats are there cutting them off and those types of things, they present a hazard in terms of navigation. They dart in front of boats and those types of things as a problem.

SENATOR NELSON: Senator Russman, would you believe that in the state of New Hampshire there are families who enjoy using these ski craft? Would you believe that they have paid for this ski craft? Would you believe that maybe they can't afford to live on the lake? Would you believe that New Hampshire residents might enjoy using these? Would you believe that these taxpayers, people who have invested and bought these recreational vehicles will now be denied access to New Hampshire lakes?

SENATOR RUSSMAN: I don't think that is the issue, Senator Nelson, I really don't. I don't think that is it at all. As a matter of fact, these substitutes that they are now talking about are apparently about \$5,000. I am told that there are many, many other boats that



are actually cheaper than that to use, so I don't think that that is a fair thing to say, I really don't. I don't think that they are going to be denied access. As a matter of fact, I would encourage more access to New Hampshire lakes.

SENATOR NELSON: Would you believe, Senator Russman, that when we talk about these lakes and we talk about people who live around here, that there are people in the state of New Hampshire who are being denied and for some reason when we get into this area, we want to consider sacrosanct, like the water and this area, that we have to remember that there are other people in the state of New Hampshire who are just as entitled to this opportunity and that in fact these pieces of legislation are government intrusion that are denying some of our residents even though we talk to you about the beauty and the quality and everything, would you believe?

SENATOR RUSSMAN: No, there are a number of lakes that are open for jet skis and there are number of areas that they can still go. I don't believe that anybody is being denied access and no one is being denied. It is a mode of transportation that is being denied.

Senator Blaisdell moved the question.

Adopted.

A roll call was requested by Senator Currier.

Seconded by Senator Blaisdell.

The following Senators voted yes: Oleson, Heath, Fraser, Currier, Roberge, Nelson, Colantuono, Podles, St. Jean, Shaheen, Hollingworth.

The following Senators voted no: Hough, Disnard, Blaisdell, Bass, Pressly, McLane, Russman, Delahunty, Cohen.

Yeas 11

Nays 9

Adopted.

Ordered to third reading.

## ANNOUNCEMENTS

### RESOLUTION

Senator Delahunty moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that the bills ordered to third reading be read a third time by this resolution, all titles be the same as adopted and that they be passed at the present time; and that when we adjourn, we adjourn until Tuesday, February 11, 1992 at 1:00 p.m.

Adopted.

**LATE SESSION****Third Reading and Final Passage**

**SB 346**, an act relative to certain restraining orders and requiring arrest for certain violations of such restraining orders.

**SB 350**, an act expanding the membership of the task force on mental health and criminal justice and continuing the study of the interactions between the mental health and criminal justice systems.

**SB 353**, an act relative to copying recordings.

**SB 382**, an act establishing a study committee on the selection, nomination and confirmation of judicial appointees.

**SB 388-L**, an act relative to preserving utility licenses on municipal and state discontinued highways.

**SB 401**, removing the exemption from jury service for physicians and surgeons.

**SB 407-FN**, an act relative to the acceptance of credit cards for motor vehicle related offenses by clerks of court and bail commissioners.

**SB 409-FN**, relative to misrepresentation of weight by commercial packagers.

**SB 413-FN**, an act allowing nonprofit organizations to use informational signs on certain highways.

**SB 426-FN**, an act establishing a task force to develop a strategy to train police and prosecutors to successfully prevent, investigate and prosecute sexual assault cases.

**SB 433-FN-L**, an act relative to the registration and equipment standards of motor vehicles known as street rods.

**SB 444**, an act relative to the definition of ski craft.

Senator Currier moved to adjourn until Tuesday, February 11, 1992 at 1:00 p.m.

Adopted.

Adjournment.

*February 11, 1992*

The Senate met at 1:00 P.M.

A quorum was present.

The prayer was offered by Father Thomas Keenan, Senate Guest Chaplain.

*Almighty and eternal God, you reveal your glory to all the nations when men and women, your servants, your messengers, act with*

*wisdom and justice and service to your people. Through you, authority is rightfully administered, laws are enacted and judgement is decreed with fairness and compassion. Assist with your spirit of councilmen fortitude, this Senate body that their work may be conducted in righteousness and be eminently useful to your people. As New Hampshire prepares for the primaries we are constantly reminded that we elected officials and citizens easily forfeit our credibility and respect when we forget that we are servants of those who have elected us or have chosen us. May our efforts be directed to the goods of all the citizens, especially the most needy, the most vulnerable and those whose voices might easily be ignored. Keep us in mind and not only of the people that we serve, but the environment we have inherited. May the work that we do express this profound respect for our land and its resources. We likewise commend to your unbounded mercy, all who dwell in this state and country. Bless us and all people with peace which the world cannot give. We pray to you our Lord, and God, forever and ever.* Amen.

Senator Colantuono led the Pledge of Allegiance.

## INTRODUCTIONS

PRESIDENT DUPONT: The family of Wayne King has a new family arrival as of last evening. Zachary Douglas King, a little bit over eight pounds. He arrived about 12:18 a.m. last evening.

## HOUSE MESSAGE

The House of Representatives is ready to meet with the honorable Senate in Joint Convention for the purpose of attending to the remarks of Mr. Patrick Buchanan.

Recess.

Out of recess.

## HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

**SB 193-FN**, relative to limits on motorboat speeds.

Senator Heath moved concurrence.

Adopted.

Senators W. King and Nelson are excused for the day.

Recess.

Out of recess.

**COMMITTEE REPORTS****SPECIAL ORDER**

**SB 310**, an act establishing a chancery court within the superior court which will have jurisdiction over corporate law issues. Judiciary committee. Inexpedient to Legislate. Senator Hollingworth for the committee.

Senator Podles moved that we have SB 310 an act establishing a chancery court within the superior court which will have jurisdiction over corporate law issues laid on the table.

Adopted.

**LAID ON THE TABLE**

**SB 310**, an act establishing a chancery court within the superior court which will have jurisdiction over corporate law issues is laid on the table.

**SB 303**, an act establishing a committee to study the various options available to fund and deliver medical benefits for state employees. Insurance committee. Ought to Pass with Amendment. Senator Bass for the committee.

**4889L**

**Amendment to SB 303**

Amend the title of the bill by replacing it with the following:

**AN ACT**

establishing a committee to study the various options available to  
fund and deliver medical benefits for state employees  
and relative to the funding methodology  
of the retirement system.

Amend the bill by replacing all after section 3 with the following:

4 Funding Methodology Used to Finance Retirement System.  
Amend the introductory paragraph of RSA 100-A:16 to read as follows:

All of the assets of the retirement system shall be credited, according to the purpose for which they are held, between 2 funds, namely, the member annuity savings fund and the state annuity accumulation fund. Each of the funds shall be subdivided on account of the various member classifications. **In making the determinations required under this section for financing the retirement system, the board of trustees shall use the open group aggregate funding**

**methodology. The board of trustees shall direct the system's actuary to prepare biennial valuations of the system's assets and liabilities commencing with the valuation prepared as of June 30, 1991. Such biennial valuation shall be the sole basis for determining the annual contribution requirements of the system until the next following biennial valuation.**

5 Effective Date. This act shall take effect upon its passage.

### AMENDED ANALYSIS

This bill establishes a committee to study the various options available to fund and deliver medical benefits for state employees. The committee shall examine, among other things, the cost, level of benefits which would be available, participation by employees, and payment of premiums.

This bill changes the funding methodology of the New Hampshire retirement system by requiring the board of trustees to use the open group aggregate method.

SENATOR BASS: Mr. President, as all of you are well aware, the question of delivery of health care benefits to state employees is a problem that has been around and has been growing for a number of years. The bill itself establishes a committee consisting of Representatives of the various interest involved in this particular problem with the objective, the examining of the various types of medical insurance that are available and what objections are available in order to establish a legislative policy if it's necessary to deal with the problem of such problems as employee costs sharing, deductibles and so forth. The amendment establishes a methodology for the actuary to use in developing employer normal rates for the New Hampshire retirement system. I'm aware of the fact that this is a significant important issue. In the first place, the adoption of this amendment will immediately result in a savings of the difference between \$88,000,000 to the employer as it is now with us doing nothing and \$53,500,000 which is the absolute maximum that it could possibly cost the employer if we establish this methodology. By the way, the second part of the amendment simply states that the actuary will only produce evaluations on a two year basis so that the employer rates can't be changed on a six month basis or a one year basis. Now this is not an issue that is a partisan issue, it is not an issue that republicans or democrats should be taking different sides on. This is in fact an issue, for me at least, of the Senate establishing for itself, a position in which it will send a message to the employers that we are making an immediate and significant effort to reduce the employer share. That is the money that is paid by the municipalities, by the school districts and by the county government and by the

state of New Hampshire itself. It is in my opinion, not a significantly controversial amendment. I think that it is very important to the process as to the resolution of the problem with the retirement system that the Senate put its foot forward and establish for itself a position of leadership in this issue. A position that says that we care enough about this problem to step forward before school district meetings and before town meetings to do something that will save not \$1,000,000 or \$10,000,000, but over \$30,000,000. It is my hope that the Senate will adopt this amendment to the committees report and send the bill on to the House.

Senator Disnard moved that we have SB 303 an act establishing a committee to study the various options available to fund and deliver medical benefits for state employees laid on the table.

Recess.

Out of recess.

Senator Disnard withdrew his motion.

SENATOR DISNARD: Senator Bass, and members of the committee, and certainly the President, I concur that the amendment is certainly a method for dialogue between the House and the Senate and that all parties that are concerned with retirement. I also believe that there is not complete consensus among all the parties that belong to the retirement group, the different groups that are out there. I hope that we all understand that this is not a complete package, but part of a package. It certainly sends a message and I think we all believe, I hope, that there are other items to be discussed, openly and among all parties here relating to the retirement. I will request a unanimous vote for the amendment.

Committee amendment adopted.

Ordered to third reading.

**SB 307-FN**, an act authorizing disclosure of certain information contained in the records of the department of revenue administration to the office of reimbursements, division of mental health and developmental services. Judiciary committee. Ought to Pass. Senator Podles for the committee.

SENATOR PODLES: Mr. President, SB 307 allows for the sharing of certain information which has been contained in the records of the Department of Revenue to the office of Reimbursements, Division of Mental Health and Developmental Services. The information regarding heirs to the estate originally comes from the probate court and the records are public. The revenue department has access to these records from the probate court for inheritance tax purposes.

For years the revenue department shared certain information regarding legatees with the divisions since statutes empower the division to recover funds for an estate. The department of revenue would like to continue to share this information, but wants it legalized. Doing it the same way would be in violation of the confidentiality law of department of records. It would seem to make sense and be more cost effective for the state to receive information at one place and distribute it from that place, rather than asking each probate court to mail multiple listings. The committee recommends ought to pass.

Adopted.

Ordered to third reading.

**SB 339**, an act establishing a committee to study the impact of New Hampshire's product liability laws on manufacturers in New Hampshire. Judiciary committee. Ought to Pass with Amendment. Senator Hollingworth for the committee.

**4895L**

#### **Amendment to SB 339**

Amend section 1 of the bill by inserting after paragraph VII the following new paragraphs:

VIII. One representative from the commerce, small business and consumer affairs committee, appointed by the speaker of the house.

IX. One attorney, appointed by the New Hampshire Trial Lawyers Association.

X. One individual who has been injured by a defective product, appointed by Fair Access to the Courts.

XI. One representative of the New Hampshire Association of Commerce and Industry, appointed by such association.

**SENATOR HOLLINGWORTH:** The committee on Judiciary moves SB 339 ought to pass with amendment. The bill simply establishes a committee to study the impact of New Hampshire's product liability laws on manufacturers in New Hampshire. The amendment would add a few more members, more balanced to the committee. A representative from Commerce Small Business and Consumer Affairs committee, an Attorney appointed by the New Hampshire Trail Lawyers Association, an individual who has been injured by a defective product appointed by the Fair Access to the Courts and a representative of the New Hampshire Association of Commerce and Industry appointed by that association. Nothing clearer indicates what happens in product liability than if you have been listening to the news in the last couple of days about Dow Corning and what has

happened to those women. While I support a study and an investigation, I think that nothing clearer shows why we have such strong feelings about having a product liability for those manufacturers who would produce defective or dangerous products.

Committee amendment adopted.

Referred to Economic Development committee (Rule #24).

**SB 392**, an act relative to guardians ad litem. Judiciary committee. Ought to Pass with Amendment. Senator Podles for the committee.

**4902L**

### **Amendment to SB 392**

Amend RSA 458:17-a, II as inserted by section 2 of the bill by replacing it with the following:

II. Persons accepting appointment as a guardian ad litem agree to serve as officers of the court and have such standing in the proceedings as the court deems appropriate and may, upon approval of the court, utilize the service of others found necessary by the court to represent the child's best interest. Guardians ad litem shall respect communications between themselves and the child and shall disclose such information only in accordance with applicable rules and, as required by the court, in rendering a report with the guardian ad litem's recommendations or in an ex parte proceeding to enable the court to make an informed decision. When the child's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability or some other reason, the guardian ad litem shall be the holder of the privilege, and have authority to waive the privilege, but only so long as the guardian ad litem reasonably believes that the child cannot adequately act in the child's own interest.

Amend RSA 458:17-a, II-a as inserted by section 3 of the bill by replacing it with the following:

II-a. The fees for services for the guardian ad litem and others utilized by the guardian and approved by the court shall be a charge against the parties in a proportional amount as the court may determine. Where the parties are indigent, compensation for guardians ad litem and others utilized by the guardian and approved by the court shall be based upon the applicable fee schedule established by the supreme court for indigent defense counsel.

### **AMENDED ANALYSIS**

This bill permits a court to limit the scope of a guardian ad litem appointment.

This bill also specifies the powers and duties of guardians and the



method for payment of fees to guardians and others utilized by the guardian and approved by the court.

**SENATOR PODLES:** Mr. President, SB 392 permits a court to limit a scope of a guardian ad litem in disputed co-study cases. It also specifies the powers and the duties of guardians and the method for payment of fees to guardians and others approved by the court. The Chief Justice of the Supreme Court and others within the Judiciary felt strongly enough about the bill that they had superior court judge Linda Dalianis testify for the bill. The bill will help improve the efficiency of the program, it will help improve delays in court time and most of all, save money. The committee recommends ought to pass with amendment.

Committee amendment adopted.

Ordered to third reading.

**SB 395**, an act relative to penalties for persons less than 21 years of age charged with transportation of liquor. Judiciary committee. Inexpedient to Legislate. Senator Podles for the committee.

**SENATOR PODLES:** Mr. President, SB 395 allows a person under 21 who is charged with first offense of transporting alcoholic beverages to surrender his license prior to a hearing before the Department of Safety and enroll in an impaired driver education program. The Safety Department opposes the bill, because the current impaired driver education program currently and presently is for convicted DWI drivers. They feel the bill is not necessary, it is not an appropriate route to take and the committee recommends inexpedient to legislate.

Committee report adopted.

**SB 396-FN**, an act relative to motor vehicles and defaults on court fines and taxes. Judiciary committee. Ought to Pass. Senator Russman for the committee.

**SENATOR RUSSMAN:** Yes, this bill is a rather innovative approach to try to collect more money on some of these outstanding court defaults that we have, particularly in the area of out-of-state people that come here and either register vehicles here or come to court here and just don't pay their fines and then they go back across the state lines. Basically what it does, is that people that don't pay their fines, their names will be given to the credit union in their home state which will hopefully affect their credit and it will state, right on the summons that it will be given to their credit union and so there will be no doubt that their credit might be affected if that happened. Also commercial businesses the same way. It could be

affected if they don't pay some of their court fines and defaults that are owed to the state of New Hampshire that they would have their plates revoked. So hopefully, they will end up in the long run, being a money maker. There is some short term money that has to be put in to get the computer program up and running to be able to do that, but once that is done, it should be quite manageable; hopefully, it will bring in quite a bit more money.

SENATOR COLANTUONO: Senator Russman, I am not sure if this came up at the hearing, I don't believe that I was at the hearing, but I recieved a call from my town clerk complaining that it was going to create problems when they go to register vehicles if people don't have their driver licenses with them. They had enough problems with admissions and everything else that they have to do at the town clerks offices. So how exactly would this work if you walk in to register your vehicle at a town clerk?

SENATOR RUSSMAN: In all honesty, I cannot answer that question fairly. I can only speculate that either they would be required to go get their license or I would defer to Senator Hollingworth.

SENATOR HOLLINGWORTH: I just wonder, don't you usually have to have your license with you when you drive your car, so if they went to the clerk's office, they more than likely drove themselves there?

SENATOR COLANTUONO: Thank you. I wanted to relay that question on behalf of my town clerk, Alice Taylor, one of the finest town clerks in the state.

Adopted.

Ordered to third reading.

**SB 404-FN**, an act relative to chiropractic practitioners and privileged communications. Judiciary committee. Ought to Pass with Amendment. Senator Colantuono for the committee.

**4899L**

### **Amendment to SB 404-FN**

Amend the bill by replacing section 1 with the following:

1 New Section; Chiropractors; Privileged Communications. Amend RSA 316-A by inserting after section 26 the following new section:

316-A:27 Privileged Communications. The confidential relations and communications between any person licensed under provisions of this chapter and his patient are placed on the same basis as those provided by law between attorney and client, and, except as other-

wise provided by law, no such doctor of chiropractic shall be required to disclose such privileged communications. Confidential relations and communications between a patient and any person working under the supervision of a doctor of chiropractic that are customary and necessary for diagnosis and treatment are privileged to the same extent as though those relations or communications were with such supervising doctor of chiropractic. This section shall not apply to disciplinary hearings or actions conducted under RSA 316-A:22, relative to the board of chiropractic examiners, RSA 326-B:12, relative to the board of nursing, RSA 151-A:11 relative to the board of examiners of nursing home administrators, or any other statutorily created medical occupational licensing board conducting disciplinary proceedings. This section shall not apply to hearings conducted pursuant to RSA 135-C:27-54.

### AMENDED ANALYSIS

This bill makes confidential communications between a licensed chiropractor and any patient privileged unless otherwise provided by law. Confidential communications between a patient and a person working under the supervision of a licensed chiropractor are similarly privileged. The bill precludes application of the privilege to other medical licensing boards.

SENATOR COLANTUONO: This bill basically gives the same privilege to patients to chiropractic practitioners as is given under a present law to any other type of doctor. The wording explicates exactly the privilege and the doctor's statute. The committee felt that it was appropriate, because when a person goes in to be treated by a chiropractor they get asked the same kind of questions about their medical history and so forth, which should be kept confidential. So the committee recommends ought to pass with an amendment which is on page five in the calendar which simply tracks the language exactly of the physicians and surgeons privilege statute. The original bill has a few errors in the way in which it was drafted.

Committee amendment adopted.

Ordered to third reading.

**SB 414-FN**, an act authorizing a pilot program in one county for investigative services for attorneys providing counsel to indigent defendants. Judiciary committee. Ought to Pass. Senator Podles for the committee.

SENATOR PODLES: Mr. President, SB 414 sets up a two year pilot program in one New Hampshire county to be determined by the Judicial council for investigative services for attorneys serving as

counsel to indigent defendants. The intent of the bill is to save costs for various types of services and to be able to negotiate a lower rate. The committee recommends ought to pass.

Referred to Finance (Rule #24).

**SB 334-FN-A**, an act authorizing the division of public health services to carry out a rabies surveillance to identify and gauge the threat to the public's health and making an appropriation therefor. Public Institutions, Health and Human Services committee. Ought to Pass with Amendment. Senator J. King for the committee.

4893L

### Amendment to SB 334-FN-A

Amend the bill by replacing sections 1 and 2 with the following:

1 Statement of Purpose. The general court recognizes that the spread of rabies from the mid-Atlantic state is occurring at an alarming rate and that New Hampshire does not have a means to gauge the threat of this disease on its domestic and wild animals, citizens and visitors. Therefore, the general court hereby develops an extended rabies surveillance effort under the direction of the division of public health services with the active participation of the department of agriculture and the fish and game department.

2 Rabies Surveillance Added. Amend RSA 125:9, II to read as follows:

II. Make investigations and inquiries concerning the causes of epidemics and other diseases, the sources of morbidity and mortality, and the effects of localities, employments, conditions, circumstances, and the environment on the public health. **Investigations authorized under this paragraph shall also include an extended rabies surveillance effort which shall be conducted with assistance from the department of agriculture and the fish and game department.**

### AMENDED ANALYSIS

This bill authorizes the division of public health services, with the assistance of the department of agriculture and the fish and game department, to carry out an extended rabies surveillance effort to gauge the threat to the public's health. The bill also authorizes the division to establish one part-time laboratory scientist II position. The bill makes an appropriation for its purposes.

This bill was requested by the division of public health services, department of health and human services.

SENATOR J. KING: SB 334 is an act that allows the division of health to spend \$37,000-\$27,000 for the health and \$6,000 for the fish and game. We have been told in the committee that there is a rabies

scores coming up the coast and I guess the last place it is in is Connecticut. So the purpose of this bill is really to be prepared and we figured for the small amount of money it is worth the investment. It's the old saying: an ounce of prevention is worth a pound of gold. Thank you.

Committee amendment adopted.

Referred to Finance (Rule #24).

**SB 356**, an act relative to quality assurance records in nursing homes and health maintenance organizations. Public Institutions, Health and Human Services committee. Ought to Pass with Amendment. Senator Bass for the committee.

**4897L**

### **Amendment to SB 356**

Amend RSA 420-B:26 as inserted by section 2 of the bill by inserting after paragraph IV the following new paragraph:

V. Nothing in this section shall be construed to prohibit the commissioner from performing the duties described in RSA 420-B:10. The commissioner shall keep all records of a quality assurance program confidential.

**SENATOR BASS:** Mr. President, quality assurance programs are internal programs that are utilized by health care entities to better improve the quality of the services that they provide and the appropriateness of that service. It is felt that under some circumstances it is difficult for health care providers to adequately address internal problems which exist within their organizations. If that information can be made public as a result of some suit that might be filed against the health care agency. Now last year we established this confidentiality of these quality assurance records for hospitals and mental health centers. What this bill does, is extend that confidentiality to nursing homes and HMO's. The amendment clarifies a relationship between the HMO's and the insurance department with respect to access to these records. The committee urges the Senate's adoption of its amendment and its report of ought to pass as amended.

Committee amendment adopted.

Ordered to third reading.

**SB 360**, an act establishing a committee to study head injury cases in New Hampshire. Public Institutions, Health and Human Services committee. Ought to Pass with Amendment. Senator J. King for the committee.

4880L

**Amendment to SB 360**

Amend subparagraphs II(a) and (b) of section 1 of the bill by replacing them with the following:

(a) Two members of the senate, or designees, appointed by the president of the senate.

(b) Two members of the house of representatives, appointed by the speaker of the house.

Amend the bill by replacing section 3 with the following:

3 Mileage; Chairperson. The committee shall elect a chairperson from among its members at the first meeting, which shall be called by the first-named senate member within 30 days of the effective date of this act. Members of the committee shall serve without compensation, except that the legislative members shall receive mileage at the legislative rate when attending to their duties on the committee.

SENATOR J. KING: SB 360 sets up a study committee for those who have head injuries. That is usually anything that has to do with the skull or the brain. Each year this number increases. Once they are taken care of medically, most of them drift away and no one knows what has happened to them. They would like to have this set-up so that they can set-up a registry of the number of the people and the cause of the injury. Hopefully, instead of becoming a vegetable and sitting at home, they will be able to go to this program and find out what they can do to live a normal life. Thank you.

Committee amendment adopted.

Ordered to third reading.

**SB 410**, an act relative to AIDS. Public Institutions, Health and Human Services committee. Ought to Pass with Amendment. Senator McLane for the committee.

4885L

**Amendment to SB 410**

Amend RSA 141-F:2, IV-b as inserted by section 2 of the bill by replacing it with the following:

IV-b. "Health care worker" means dentists and dental hygienists licensed under RSA 317-A, emergency medical care providers licensed under RSA 151-B, nurses licensed under RSA 326-B, physicians licensed under RSA 329, physician assistants licensed under RSA 328-D, podiatrists licensed under RSA 315 and operating room technicians certified by the New Hampshire Medical Society.

SENATOR MCLANE: This bill was put in at the request of the Division of Public Health after long and serious study. I have here,

that I wish that I could ask the Clerk, Gloria Randlett, to pass around at this time, a very new and serious study on high schools. I'm asking this to be passed around because I do think that it is important for the Senate in New Hampshire to know what we are dealing with in the AIDS epidemic and it is here in New Hampshire. To me this is a devastating study. I just received this yesterday from Joyce Johnson who is the person in the Department of Education that has done this study and I just think that the Senate ought to have it. It is going tomorrow to the state board of education. I think that this Senate ought to have it as sort of a real reality factor when we are discussing AIDS as we will be today and again tomorrow. This bill merely states under what circumstances and times, defines exposure prone procedure and defines health worker. The amendment in the back of the book adds operating personnel, and then describes and calls for use of universal precautions in the use of protective barriers and in the care and use of disposal of needles and other sharp instruments. If you have been in a hospital lately, a good hospital, you know that they are using most of these universal precautions, but I think that it is important that the division of public health take a leadership role in defining them and insisting upon their use. So this bill would define and tell about universal procedures. I think it is a sensible and good idea and I would urge its passage.

SENATOR SHAHEEN: Senator McLane, can you tell if the Medical Association and the Nurses Association for example, other health care professionals support this legislation?

SENATOR MCLANE: All of them. I think that that is an important question. The Medical Society, the Public Health Department who proposed the bill, the Nurse's Association, the New Hampshire Association of Epidemiologists and the Association of Practitioners and Infection Control were all in favor of this.

SENATOR SHAHEEN: Thank you.

SENATOR PODLES: Senator McLane, the amendment includes the definition of health care worker. I notice that the Chiropractors are not included, could you tell me why?

SENATOR MCLANE: One, because no one ever suggested it, and two, because I think if you read on the first page, line 14, it defines exposure prone procedures. It is defined as evasive procedures during which there is a recognized risk for percutaneous injury to the health care worker. If such injury occurs, the health care workers' blood is likely to contact a patients body cavity subcutaneous tissues

or mucus membranes. I think that by that definition, you have to go to a pretty rough chiropractor to have them fall within that definition.

Committee amendment adopted.

Ordered to third reading.

### **TAKEN OFF THE TABLE**

Senator Fraser moved to have SCR 11 encouraging the U.S. Congress to consider the economic impact of federal laws and legislation on states taken off the table.

Adopted.

SENATOR FRASER: Thank you, Mr. President. Mr. President, we have, as you know, this bill because of the acute awareness of my colleague Senator St. Jean who realized that the President was not addressed in this SCR. We have since not only amended that to include the President, but we also strengthened the language so far as the constitutional amendment 10. I now urge the Senate to adopt the resolution. Thank you.

SENATOR ST. JEAN: Senator Fraser, where is the amendment?

PRESIDENT DUPONT: Senator St. Jean, the amendment is now being passed out. I was just going to ask the same thing.

SENATOR MCLANE: Senator Fraser, if we pass this today, will you have an opportunity to hand it to the President tomorrow?

SENATOR FRASER: I don't know, but I would like to. I am sure that he would support it.

Senator Fraser offered a floor amendment.

**4926L**

### **Floor Amendment to SCR 11**

Amend the title of the resolution by replacing it with the following:

#### **A RESOLUTION**

encouraging the U.S. Congress and the President of the  
United States to consider the economic impact of  
federal laws and legislation on states.

Amend the resolution by replacing all after the title with the following:

Whereas, the President of the United States and Congress continue to mandate and assign additional programs and responsibilities to the states and political subdivisions within such states; and



Whereas, the states and political subdivisions of such states do not have the funds or the ability to raise such funds in the current economic decline; and

Whereas, New Hampshire is proud of its independence and takes pride that it imposes neither a state sales or income tax on its residents while it ranks forty-fourth in reliance on federal income; and

Whereas, we urge Congress and the President of the United States to cease further pre-emption of state and local powers derived from the Tenth Amendment of the United States Constitution; and

Whereas, we believe that fiscal responsibility by the federal government is necessary to restore the economy; now, therefore be it

Resolved by the Senate, the House of Representatives concurring:

That the general court urges that the United States Congress and the President of the United States be cognizant of the autonomy, the policies and resource needs of the states and affirm that the federal government shall not mandate or assign any new, expanded or modified programs or responsibilities to any state or political subdivision of any such state in such a way as to necessitate state or political subdivision expenditures, unless such programs or responsibilities are fully funded by the federal government, or unless such programs or responsibilities are approved for funding by the state or political subdivision of such state; and

That the general court requests that the United States Congress inventory and review all federal programs and policies currently in effect to assess their fiscal impact on the states for implementation and either appropriate such funds or repeal said mandates; and

That all states be either granted options for the implementation of federally required standards for drugs and crime prevention, education, environment, human services, public health, social services, transportation, and other federally sponsored legislation or be allowed to achieve the goals of such federal mandates by using their own most efficient and cost-saving methods; and

That the states rights for revenue and tax policies not be infringed upon by federal legislation; and

That the United States Congress and the President honor the language, spirit and intent of the Tenth Amendment to the United States Constitution by ceasing their usurpation of state's powers; and

That all compulsory federal legislation which directs states to comply under threat of civil or criminal penalties or sanctions or requires states to pass legislation or lose federal funding be prohibited; and

That copies of this resolution be sent by the clerk of the senate to the President of the United States, to the Speaker of the United

States House of Representatives, to the President of the United States Senate and to the New Hampshire members of both Houses of Congress.

### AMENDED ANALYSIS

This senate concurrent resolution urges the Congress and the President of the United States to consider the economic impact of federal laws and legislation on states.

Floor amendment adopted.

Ordered to third reading.

### TAKEN OFF THE TABLE

Senator Podles moved to have SB 405 relative to driver attitude training for repeat and habitual offenders taken off the table.

Adopted.

**SB 405**, relative to driver attitude training for repeat and habitual offenders. Ought to pass.

**SENATOR PODLES:** Mr. President, I had asked that this bill be put on the table because I wanted to check a few things out. I have talked with several people and there is support for the bill and I think that it ought to pass.

**SENATOR HOLLINGWORTH:** Senator Podles, in your investigation of this, did you find out whether, in fact, the state would have to pay for those individuals that may be indigent and may not be able to afford this habitual offender attitude training school?

**SENATOR PODLES:** Yes that was discussed, however, the AAA seems to support this bill. I also talked to Doug Patch about it, he has reservations, but it ought to be passed to the House.

**SENATOR HOLLINGWORTH:** Unfortunately, I am reluctant to support this piece of legislation because it doesn't have a fiscal note. It seems to me in view of the serious problems that we have in this state with our finances, I feel most uncomfortable about passing this legislation until we know what it is going to cost the state of New Hampshire. We have opened these avenues before where we are now paying for things that we did not know what it was going to cost us, so therefore, I would not be in favor of passing this until we had some idea of what this was going to cost and how this is going to effect our budget.

**SENATOR CURRIER:** The Senate Transportation committee heard numerous testimony on this bill and it was all favorable regarding the driver attitude program. In other states where this program was in place, there was significant reductions in the number of

cases of habitual offenders and I would urge the full Senate to pass this piece of legislation onto the House for their further consideration.

SENATOR DISNARD: Senator Currier, the question that I asked the other day, the furthest community is Pittsburg, how far would a person from Pittsburg have to travel to take one of these attitude courses?

SENATOR CURRIER: It would depend on how many habitual offenders that area of the state had. Because the programs will be actually established at various portions of the state depending on the number of people that are going to be available to take the course. So in other words, if there are a lot of habitual offenders there, there could be a course there, otherwise, they might have to come down to Laconia or Whitefield or somewhere else.

SENATOR DISNARD: Can I rephrase my question? What is the maximum distance a person would be required to travel to take this course?

SENATOR CURRIER: The length of the state.

SENATOR SHAHEEN: Senator Currier, are there currently programs in effect that can provide this kind of training and how are those programs subsidized, and if this is passed, say in June of this year when it becomes effective and we start sentencing people to take this training, are there going to be programs available to provide it to accommodate the numbers of people who are going to need it?

SENATOR CURRIER: This is truly a brand new program. There are no programs in the state of New Hampshire right now. Once this is passed, if it is passed in terms of favorable consideration in the House, the programs will be in place after the passage. So it will take some time of having the program develop.

SENATOR SHAHEEN: So isn't it conceivable that if this becomes effective 60 days after its passage that we are going to have people who are going to be required to take this training who aren't going to be able to get it and therefore they are not going to be able to have their drivers privileges restored because they are not going to be able to complete this program?

SENATOR CURRIER: I don't believe that the judges are going to remand people to this program until the program is in place.

SENATOR SHAHEEN: But do I understand you that we are relying on the private sector to provide these programs, so that there is no phase-in period for this to take place, so that it may happen and it may not?

SENATOR CURRIER: No, I think that there will be a phase-in phase. I think the thing is, is that the private sector is best equipped to handle this. I mean it's obvious in previous testimony and debate on this floor about the mess in terms of the DWI habitual offender program that the state is running. I think that there will be a period of time, I am not sure what that time is, but I know that this program is up and running in other states and all that they have to do is transplant it and find the body to teach it. So I am not sure that there is a major problem.

SENATOR SHAHEEN: So do we not need to make an allowance for that in the bill? We may assume that it is going to get up and running in the next six months, but what if in fact given the poor economy and the unavailability of capital for people to start up new businesses in the state, they are not able to get anything going for two or three years and we have this law on the books that says people have to go through this program?

SENATOR CURRIER: Testimony at the hearing indicated that if this bill was passed that there would be a program in place almost immediately in terms of the people who were providing it. There was testimony at the hearing from a national organization, I can't remember his name. I would have to look at the hearing notes.

SENATOR PODLES: Senator Hollingworth, would you believe that according to the methodology on the back of the bill, it says that legislation will have no fiscal impact because the cost can be absorbed without additional funding?

SENATOR HOLLINGWORTH: Senator Podles, I see that footnote, but I have seen some of their other fiscal notes and I am inclined not to believe that since I do know that we do have to provide services for those who cannot pay.

SENATOR HOLLINGWORTH: Senator Currier, isn't it true that a program such as this is going to cost somewhere in the range from \$250 to \$300 for the person who is going to have to take it?

SENATOR CURRIER: There was a range of that figure that was applied at the cost of this fee. The thing is, is that the success of this program in terms of testimony in other states is so dramatic in terms of reducing habitual offenders. I mean we are talking about people who have multi convictions for uninspected vehicles, multi accidents, not paying parking fines, they have an attitude problem. They are habitual offenders. We need to get those people in line and \$250 dollars is nothing.

SENATOR RUSSMAN: This doesn't cover parking tickets and those types of violations. What the habitual offender statute does, is

it covers in a five year period, if you get three or more major offenses, like reckless operation, DWI in any five year period, 12 or more minor offenses which are moving violations, speeding charges, those are moving violations. Not inspection stickers, they don't count. There are some other things that you would get, like you would get one major, eight minors or two majors and four minors. There is a group there that you go by. Then you are adjudicated to be a habitual offender. Now you lose your license for one to four years under that program. You would think that walking for one year would be enough to let people know that they have done something wrong. If you get caught driving while you are under habitual offender status, you would go to the state prison, not county jail time, but hard time at the state prison for one to five years. So, clearly there is something already on the books relative to this. I am not saying this in speaking for or against it, but just so that you know what you are voting on, that is the habitual offender status. The other part of it that it refers to here is the point system. If you accumulate a certain number of points and if you are under 25 years of age it is less in a 12 month or 24 months or 36 month period and it requires more points if you are above 25, they kind of discriminate against young drivers which is okay, you lose your license for various periods of time. That is what that is really all about and this will require that those people who lose their license go to a retraining program. Right now the Amethyst Foundation, which is county attorney Carlton Eldredge's program down there in Epping, charges about \$300 for the weekend. People that are convicted, say for first offense DWI have to go to that program or a program like that to get their license back. That is what we are talking about here. I assume that that would be kind of a nice growth industry, which is okay for those types of organizations to have more people come and it probably wouldn't hurt anybody to go, but that is what it involves, not parking tickets and non-inspection and so on and so forth, it is something else.

SENATOR OLESON: Mr. President, I would like to take a minute of your time and my colleagues. I am in between. I think that Senator Disnard touched on it to a certain extent when he said that a habitual offender, say in Pittsburg might have to take a course. Now the bill does not state anywhere that these courses might be or how they are to be funded. If they are located in Concord, anyone who is a habitual offender can take an afternoon off or take an hour or two and take their course, but if from Pittsburg, you would have to take a day off to come down here and return home. So right off the bat, like most bills, it isn't fair and in all aspects, no bill really is. At the same time, Senator Russman pointed out that after you have been

designated a habitual offender, you lose your license for a year. There ought to be punishment and you should be aware on the second and third time. So one way it isn't a fair bill and in another, it is. On this I guess I will have to flip a coin. Thank you very much.

SENATOR ROBERGE: Mr. President and members of the Senate, we were speaking about the penalties of inappropriate driving behavior of a habitual offender and that is just fine, they should be punished, but in addition to that you want to change their inappropriate behavior. The way to do that is to train them out of their bad habits and this is what this is all about. Part of the way that they do that is the way other training is frequently conducted. A group of these people, maybe 12 or 15 sit around and they start to say 'well why did you run three stop signs or why do you always speed' and maybe George is the speeder and I am the stop sign person and he would say to me 'well, I don't run stop signs, that's a bad thing' and I would say 'well I don't speed, George, why do you do that?' This is kind of the way that the program is conducted. It gets different people with different lives together and they discuss why their behavior is inappropriate. It works. It has worked in other states and it can work here. This is for people who really need their mental process changed in addition to their license revocation and it is only for one day and it is conducted on a weekend. Having your license revoked is very serious. It cuts into your income, it cuts into everything that you do. We all need a license just to live. Before these people get their license back, the feeling is that their mental attitude should be changed so that they will not continue to do those inappropriate things when their license is restored. They will be cured of their bad habits.

Senator Fraser moved that we have SB 405 relative to driver attitude training for repeat and habitual offenders laid on the table.

Recess.

Out of recess.

Senator Fraser withdrew his motion.

### **MOTION TO RECOMMIT**

Senator Currier moved to have SB 405 relative to driver attitude training for repeat and habitual offenders recommitted to the Transportation committee.

Adopted.

SB 405 is recommitted to the Transportation committee.

## REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled Senate Bills:

**SB 16**, relative to the board of dental examiners.

**SB 27**, relative to extended terms of imprisonment for assault crimes where the victim or perpetrator is a law enforcement officer.

**SB 60**, establishing a task force to study the Laconia to Franklin highway problems.

**SB 120**, establishing a task force on a sunset review process and the authority of the general court to disapprove proposed administrative rules.

Senator Currier moved adoption.

Adopted.

## ANNOUNCEMENTS

### RESOLUTION

Senator Delahunty moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that the bills ordered to third reading be read a third time by this resolution, all titles be the same as adopted and that they be passed at the present time; and that when we adjourn, we adjourn to Wednesday, February 12, 1992 at 12:45 p.m.

Adopted.

## LATE SESSION

### Third Reading and Final Passage

**SB 303**, an act establishing a committee to study the various options available to fund and deliver medical benefits for state employees and relative to the funding methodology of the retirement system.

**SB 307-FN**, an act authorizing disclosure of certain information contained in the records of the department of revenue administration to the office of reimbursements, division of mental health and developmental services.

**SB 356**, an act relative to quality assurance records in nursing homes and health maintenance organizations.

**SB 360**, an act establishing a committee to study head injury cases in New Hampshire.

**SB 392**, an act relative to guardians ad litem.

**SB 396-FN**, an act relative to motor vehicles and defaults on court fines and taxes.

**SB 404-FN**, an act relative to chiropractic practitioners and privileged communications.

**SB 410**, an act relative to AIDS.

**SCR 11**, encouraging the U.S. Congress and the President of the United States to consider the economic impact of federal laws and legislation on states.

Senator Currier moved that we adjourn until Wednesday, February 12, 1991 at 12:45 p.m.

Adopted.

Adjournment.

## *February 12, 1992*

The Senate met at 12:45 P.M.

A quorum was present.

The prayer was offered by the Rev. Dawn Barry, Senate guest Chaplin.

*God of all seasons, the winter wind raises her voice in a canticle of praise over the frozen landscape of New Hampshire. The dark days of winter challenge us, especially those along the campaign trail. In the midst of chilling cold and fluctuating polls, help us to trust in you. We gather in this Senate chamber remembering the birthday of our sixteenth President, Abraham Lincoln. Responding to an aide's justification of the Civil War, President Lincoln did not succumb to spiritual pride claiming "God was on his side", but rather prayed that he would be on God's side. In this political season, give us the courage and humility needed to be on your side, gracious God. As we engage in our political democracy remind us that we are called to establish an economic democracy where what is right is what is just in the distribution of our country's resources. We welcome the forty-first President of the United States, George Bush. Lead him in your wisdom to execute the duties of his office with justice and compassion. Bless him and all who gather with the strength of conviction to serve all people as we strive to be on your side. Amen.*

Senator Heath led the Pledge of Allegiance.

## INTRODUCTIONS

## HOUSE MESSAGE

The House of Representatives is ready to meet with the honorable Senate in Joint Convention for the purpose of attending to the remarks of the President of the United States, George H. W. Bush.



Recess.

Out of recess.

### COMMITTEE REPORTS

**SB 393**, an act creating a committee to study the feasibility of locating a college in Haverhill, New Hampshire. Education committee. Ought to Pass with Amendment. Senator J. King for the committee.

**SENATOR J. KING:** The committee felt with the deep concern that they usually have for the northern part of the state, that this would be an ideal thing to do in hopes that they would get their vocational technical school. We ask that you pass it with amendment.

**4929L**

#### Amendment to SB 393

Amend the bill by replacing section 1 with the following:

1 Committee Established. There is hereby established a committee to study the feasibility of constructing a technical college in Haverhill, New Hampshire. The committee shall consist of the following members:

- I. Two senators, appointed by the president of the senate.
- II. Two house members, appointed by the speaker of the house.
- III. The commissioner of postsecondary education, or his designee.

IV. A selectman from Haverhill, chosen by the selectmen.

V. A member of the public, appointed by the governor.

VI. A superintendent, appointed by the commissioner of education.

VII. A newspaper staff person, appointed by the Littleton Courier.

VIII. One business person, appointed by the governor.

**SENATOR W. KING:** My cousin from the south, Senator King, could you explain the issue of the staff person appointed by the Courier?

**SENATOR J. KING:** I defer to Senator Disnard.

**SENATOR DISNARD:** In your absence because of the pending child, I spoke to one of the co-sponsors because there was some concern at one of the hearings about people not only from Haverill or from Littleton but to Lebanon being involved in the committee. We were trying to figure out organizations such as a business, and he came up with the idea perhaps someone from the Littleton, Courier area. You can talk to the House if you want to suggest that it be

taken out, we have no problem with that. I thought that he had a good idea. A newspaper person that covers most of that area that could do the reporting.

Committee amendment adopted.

Referred to Economic Development committee (Rule #24).

**SB 463-FN**, an act relative to academic course credit transfers within the university system. Education committee. Inexpedient to Legislate. Senator Disnard for the committee.

**SENATOR DISNARD:** The committee recommends inexpedient to legislate. The sponsor of the bill withdrew his request because his concerns had been addressed. Satellite programs will be in that area now so he seems to be happy and his suggestion is now inexpedient to legislate.

**SENATOR OLESON:** I was a sponsor of this bill. The background of it is, at one time especially on the technical school, a youngster could take course A in english or in mathematics, and to my knowledge, two and two is four and always has been, and a verb and a noun or an adjective hasn't changed. They take one course, let us say at the tech school, and then they turn around and go to another college in a state system and they would then have to take that course over again. The one who asked me to put the bill in, they thought that was a waste of time and a waste of effort and expense. Now as I understand, and I have talked with the university people and they asked me to withdraw it because they say they are proceeding in this direction and that part is being corrected. Therefore at the hearing, I did ask for this bill to be reported out as inexpedient to legislate.

Committee report adopted.

**SB 330**, an act changing the bureau of marine services to the division of marine services, department of resources and economic development. Executive Departments committee. Inexpedient to Legislate. Senator Fraser for the committee.

**SENATOR FRASER:** Mr. President, during the course of the hearing it became quite apparent that this was a personality conflict between a couple of department heads. We understand now that this dialogue has been opened up between those people who were at odds with each other and that we no longer need this legislation. We recommend that it be reported out as inexpedient to legislate.

Committee report adopted.

Recess.

Out of recess.

**SB 451-FN**, an act to require public hearings on proposed agency rules which result in fee changes. Executive Departments committee. Ought to Pass. Senator J. King for the committee.

**SENATOR J. KING:** This bill amends the statute now so that any rules that are passed that increases fees will have to have a hearing. It stands to reason, I think, that if we are responsible for the money that is spent and how it is used, then we should have some say whether it's fees or whether it's tax structure.

Referred to Economic Development committee (Rule #24).

**SB 460-FN**, an act establishing a department of commerce. Executive Departments committee. Inexpedient to Legislate. Senator Fraser for the committee.

### MOTION TO RECOMMIT

Senator Fraser moved to have SB 460-FN an act establishing a department of commerce recommitted to Executive Departments.

**SENATOR BASS:** Senator Fraser, why?

**SENATOR FRASER:** Senator Bass, Senator King and I determined this morning that maybe something could be done with the bill and we would like the opportunity to recast some of the language and possibly get it into Economic Development.

**SENATOR SHAHEEN:** Senator Fraser, will it be recommitted to Executive Departments or to Economic Development?

**SENATOR FRASER:** It is going to back to Executive Departments.

**SENATOR SHAHEEN:** Given the fact that the Executive Departments is the committee that determined that the bill was inexpedient, do we think that Executive Departments will be the best place to send it in order to get further work done on the bill?

**SENATOR FRASER:** Yes, Senator.

Adopted.

SB 460 is recommitted to the Executive Departments committee.

Recess.

Out of recess.

**SB 441-FN-A**, an act establishing a statewide enhanced 911 system and continually appropriating a special fund. Executive Departments committee. Ought to Pass. Senator Currier for the committee.

**SENATOR CURIER:** I am going to be very brief, Mr. President, because Senator Disnard wants to get home tonight. In Sunday's

Union Leader, there was a real shocking headline dealing with this particular subject matter. It says "911 nightmare" and I just want to indicate the need for this particular piece of legislation without getting involved in all the technical aspects of the bill. I just want to read to you from this Union Leader article on the front page. The dateline is Claremont, New Hampshire. It says that "Susan Jones choked to death alone, cradling a telephone, unable to tell Claremont police dispatcher, Andrew Ahern that she was only a few blocks away. Jones, 42, died January 4, just 14 days after the Claremont Police Department began operating a 911 emergency telephone service dispatch, police, fire and ambulance crews. A three inch piece of meat was stuck in Jones throat keeping air from her lungs and blocking her attempts to tell the dispatcher who she was and where she was. About 23 minutes lapsed before Golden Cross ambulance was dispatched to Jones 164 Broad Street apartment which is four blocks from the dispatch center and the ambulance. This points out to you the specific problems dealing with the emergency 911 systems". Enhance 911, which is developed in this particular bill, which has done a long study and it has actually taken two years to get to this point to get to this bill for implementation, develops enhanced 911, which would have instantly told that dispatcher, whether the person was able to speak or not, where she was located. This may have in fact, saved Miss or Ms. Jones life in this case. The bill has been studied by the members of this Senate, myself and Senator King served on this study committee. Senator Hollingworth was involved in the process early along, in the days before the implementation stage which is where we are, at this point. It implements a statewide system of emergency 911 calling and does not in any way, shape, or form, restructure the dispatching that is done at the local level at this particular time. It will direct the call to the appropriate public safety agency for the handling of the call. It is very cost-effective. In the case of this Ms. Jones, this may have in fact saved her life and it is just one example. There have been many that were given in testimony of where the emergency 911 number has helped people to get the appropriate emergency response to their particular emergency. A lot of people think New Hampshire already has 911. In the testimony in the committee, there were times when people dialed 911, delaying the actual dispatch and fire and police to an emergency scene. This here is good public policy. I would urge that the full Senate adopt the committee report of ought to pass.

SENATOR HUMPHREY: Mr. President, when I first heard about this bill, I thought that it was a very good idea until I read it. If this were just the bill that somehow standardized the 911 number throughout our state, it would be a good idea and eminently support-

able, but that isn't all that there is to it, read a little further, my colleagues, and you will find that there is a good deal more to this bill. It will create a new state bureaucracy with a state director. A paid state director who can hire staff as needed and adopt rules and collect a fund that shall be continually appropriated and shall not lapse. You might ask or should ask, where is this money going to come from into the fund to hire the director and all of this new bureaucracy? The answer to that question is, that you are being asked today in voting for this bill to approve a surcharge on telephone bills of every one of your residential and commercial customers. I will ask a few questions in just a moment to establish the amount and how much money that will amount to statewide. The purpose of the money is to buy this sophisticated electronic equipment that will allow those who receive 911 calls to determine electronically the number, the telephone number of the person placing the call and the location of that telephone. That is very expensive stuff, it turns out. I just thought it worth advising my colleagues that might not be on the committee or perhaps might not have had the chance to read the bill. But you are being asked to put a surcharge on your constituents phone bills each month. This is not for a month or six months or one year, this is month after month, forever, to fund this bureaucracy and to keep this equipment. Maybe I live in a unique district or maybe I am too new in this body, but in the year that I have served in this office, not one single constituent has talked to me in person or called me on the phone or written to me about the need for this service. I think that we ought to make it optional, frankly, and I have an amendment to do just that. I regret as we all do, the tragic death that occurred in Claremont just recently, but to suggest that we need a new state bureaucracy and that we need to put a new surcharge on the phones of our constituents giving them no choice whatsoever in the matter of whether they want this service is a much broader question, it seems to me. So at some time I would like to be recognized, Mr. President, to ask a few questions and then to offer an amendment.

SENATOR HOLLINGWORTH: I would like to stand in support of the bill as passed by the committee. I am on the bill as a co-sponsor because last session I came in with a bill to enact enhanced 911 immediately, but I was encouraged not to go forward with the legislation and to allow the study to talk to all of the interested parties and to work around the state and to gather information, which they did. The people worked numerous hours and heard testimony from everyone and came up with what I think is an excellent piece of legislation. I would like to say that I gave a little bit of my efforts to it because I just happen to be involved in name. But I am very proud

to be involved in name, because after reading what the committee came up with and the hard work and the excellent piece of legislation, I couldn't be prouder to be on it. I would ask you not to support any amendments to this, because the committee did do their work and did come up with an excellent recommendation. There is funding in there, yes. In the first year there will be 25 cents, the second year 40 cents and in the third year 60 cents in increments and that is a month. This is a pro-life piece of legislation. I do not believe that there is a person out there that would not want to save the life of their family member by paying this small fee. I guess that is basically all that I want to say. We cannot pass it as an optional, allowing them to it because there just wouldn't be enough money for the fund and it couldn't be set up, so the optional part is not a choice. It either has to be as it is and everyone pays in, or not at all.

SENATOR NELSON: Senator Currier, what did some of the small towns say about this, you know you can't get their addresses or the cost of implementing this? Just give us the birds-eye on that.

SENATOR CURRIER: Senator, part of the overall problem and the expensive cost for this system is the data base that is involved in being able, on a computer terminal, to determine the exact location of the phone. What has happened in many communities at this particular juncture is, many still do not have numbered street home addresses, and part of this bill would actually implement that, either through the cooperation of the local municipalities or the United States postal service which also has that type of service. So the local communities, from testimony during the public hearings during the study committee and during the other hearing, are in favor of the bill and have indicated their willingness to work in cooperation. They did at one point discuss the possibility, thinking that the 28-A question might enter into this thing, but it kind of took a back seat to the thing. Obviously, I am a very strong supporter of the 28-A amendment and wouldn't be putting forth legislation that was going to attach additional burdens to the cities and towns.

SENATOR NELSON: Senator Currier, maybe I didn't grasp it, are you telling me that we are not mandating anything for these cities and towns? That this isn't going to cost them any extra money to implement a system as new as this with such . . . I mean they are not on-line, they don't have addresses and etc, they are not going to incur a cost for this?

SENATOR CURRIER: There may in fact be an additional cost that may be incurred. The difference in the situation is such though, that the post office is encouraging these cities and towns to do this now. The thing is, is that the indication that we received during the hear-

ing process, again through the study committee and through the bill itself, indicated that they weren't as concerned about this particular issue because they were willing to cooperate with this new so-called state agency that we will be dealing with to establish the data base.

SENATOR NELSON: How about the cost of this, did any of the people who were in there that were going to get this 25 cents and then the next year being 40 cents and then the 60 cents in the third year?

SENATOR CURRIER: Senator Nelson, ironically enough the individual who spoke on behalf of the ratepayers in this case, ironically enough, was Chairman Smuckler of the Public Utilities commission. I mean he was talking in concern about the ratepayers in this particular case. But I am not sure, well, I won't go into what I was going to say because that is another issue.

SENATOR NELSON: I don't want you to. I want to know if there is a consumer person who studied the impact of this?

SENATOR CURRIER: The chairman of the Public Utilities commission indicated that he didn't think that this was an appropriate mechanism for funding. He thought that a surcharge should not be used. He said that it should come from the general fund money and that was the PUC's point of view. However, over 50 other states fund their 911 operations through a surcharge on the telephone.

SENATOR HUMPHREY: Senator Currier, would you say again the rate in each of the first three years per customer?

SENATOR CURRIER: It was 25 cents, 40 cents and 60 cents.

SENATOR HUMPHREY: Where does that appear in the bill?

SENATOR CURRIER: It does not, Senator.

SENATOR HUMPHREY: Well then, on what can we rely that these charges won't be even greater?

SENATOR CURRIER: This is all based on the data that was furnished to the committee from the standpoint that New England Telephone company indicated that there were 660,000 telephone lines in the state of New Hampshire and the budget that was forecasted for the implementation of the three year phase for the data bank and the equipment that it would take 25 cents and 40 cents and 60 cents over a three year period to fund the operation.

SENATOR HUMPHREY: Who decides what the rate will be?

SENATOR CURRIER: This legislature.

SENATOR HUMPHREY: We do?

SENATOR CURRIER: Yes. This legislature sets the budget for the operation of the enhanced 911 commission. The legislature sets the budget for that, at which time they then go to the PUC for a rate filing and then they get the rate back up to dollars and cents.

SENATOR HUMPHREY: Supposing that the estimated costs are understated, what will be the affect on the ratepayers, customers?

SENATOR CURRIER: If in fact, these are very conservative figures, not from the standpoint of escalating, but in terms of actual cost, if anything, these figures could go down.

SENATOR HUMPHREY: Well, Senator, have you ever seen a program where that has happened?

SENATOR CURRIER: Have I ever seen a program where that has happened? No, but there is a lot of talk about that type of thing happening today as the President indicated today.

SENATOR HUMPHREY: Thank you, Senator Currier, I appreciate your honesty.

SENATOR SHAHEEN: Senator Currier, can you tell us if in other states where there are 911 systems if this is the way that they are done and was this modeled on any particular program where it seems to work well?

SENATOR CURRIER: As I stated, the legislative study committee, over 50 percent of the other states funded this same mechanism. When we were talking about this in the study committee we had actually talked about another mechanism of study, I mean funding it. That mechanism was that so-called six percent tax on the telephone bill that everybody you know voted for, well most people did. That is suppose to be coming down to three percent, I guess, in a while. I guess that is the same question that you asked, Senator Humphrey, will it in fact come back to three percent? I am not sure, but when we are talking about taking and only bringing it back to four percent and funding it with this mechanism with the one percent that we wouldn't go all the way back with. Right now this is the only mechanism of funding. The legislative study committee, at our own expense, visited the system in Connecticut and another system in Rhode Island and this was basically formulated and adopted after the Rhode Island system.

SENATOR PODLES: Senator Currier, could you please tell me what role the Public Utilities Commission will play when this goes into effect?

SENATOR CURRIER: My understanding, Senator Podles, is that the Public Utilities Commission, a rate filing will have to be filed with the PUC for the purpose of the budget. So they will actually,



just like the telephone company, adhere a rate filing for the fee for the surcharge, so that if it is not reasonable improvement and all of those legal mumbo jumbo terms that lawyers use at the PUC regarding the rate filing, then they will actually determine whether it is reasonable and prudent, and so forth. So it will go through the same process that any other rate filing.

SENATOR PODLES: Senator Currier, what you are telling me is that this is subject to an increase in rates, and if they do occur, and then that would go to the PUC for advisement?

SENATOR CURRIER: That is correct.

SENATOR HOLLINGWORTH: Senator Currier, isn't it true that during the testimony that you received that many people said whereas New Hampshire primarily is a tourist state that it was crucial that we have legislation like this because we have so many visitors who do not know where they are at?

SENATOR CURRIER: Yes, that did come out loud and clear in testimony, not only in the executive hearings, but in the hearings that we held in the study committee, that people don't know where they are and that there are so many towns that have the street name Concord or Willow road and the problem is that with the exchanges, everybody has the same exchange, there are three towns in one exchange and the fire department doesn't know where to send the fire apparatus so they go to one place, there were specific things. Mr. Bliss, the Fire Chief indicated that in Salem and in Pelham they have had a number of serious problems where they have actually dispatched the fire department to the wrong place and this would restrict that from happening.

SENATOR W. KING: I rise in support of this bill, but I would be remiss if I did not say that I am glad that we are in the preliminary stages of the process and that this in fact will be going over to the House, because I would like to ask the sponsors as well as those who look at it in the House to ask themselves whether or not it would be better to take a look at bidding this project out as a contractual basis as opposed to creating 185 new state jobs. That is about how many people that we are talking about in the first three years of this bill. There will be 185 positions created, which means that there are 185 people who are subject to the whims of the budget process and 185 people who are part of the family of state government. I think that we ought to carefully consider whether or not it would not be better to put this out to bid in the private sector.

SENATOR HOLLINGWORTH: I just want to clear something up. I don't think that that is true. I think that these jobs are telephone company jobs. Oh they are for the state? Oh, okay.

SENATOR HUMPHREY: I want to commend Senator King for bringing into the light the shocking reticulation that we are being asked to create 185 new state positions. I want to thank Senator Currier for his intellectual honesty of admitting that there is no way that we can know how much this program will ultimately cost or more to the point, how much ultimately, this is going to add to the phone bill of each one of our residential and commercial constituents. This in fact, is a tax bill before us. Question is, do you want to impose yet another tax upon our citizens, and to do so in the middle of a recession. All of this rhetoric about unburdening the taxpayer and unburdening the economy as a way of preserving jobs and creating jobs on the one hand and on the other hand, the next moment, another tax bill. Did anyone ever ask us, did any constituent ever ask you for this, apart from the police chief or the fire chief? Look, I live in a small town, Chichester, may it ever be so humble. We have town meetings, I try to make all the ones that I can. I can't recall a single town meeting when the fire fellows and girls didn't want a new piece of equipment. I can't think of a meeting when the police didn't want something and the rescue squad didn't want something. They want the best, but of course, that is human nature, especially when someone else is paying. But in Chichester we often say no. We say make do, this is the real world we are dealing with. Property taxes are high enough, you can't have it, you have to patch up that thing and use it for awhile longer. It is just human nature. If you were at the committee hearing, you would have seen, as I did, as a committee member, that most of the witnesses were from that group of people. God bless them. I mean what would we do without our police and fire and rescue professionals and volunteers. But that isn't the same thing as saying that we have to give them a new fire truck everytime they want a new fire truck or some nice new electronic equipment. Especially if it means higher taxes for our constituents. That is my point. There is far more to this than the innocuous suggestion that all that we are doing is standardizing the 911 number. If that is all that we were doing, I wouldn't have opened my mouth at all, I would have supported it. Now the amendment which I am offering, ladies and gentlemen, makes this program elective on the part of our constituents. If they want the service they can pay for it. It is just as with any telephone service. If you want a private line you pay a little extra, if you want call waiting, you get that, if you want this enhanced service, you pay for it voluntarily. If our constituents have no choice, then this is nothing more than a tax to satisfy some people who have been watching too many movies about all those sophisticated pieces of equipment that make for exciting television on Saturday night, but for which none of my constituents have ever once asked me. So I have offered this amendment which

changes the funding portion of the bill so that it reads as follows: The enhanced 911 system shall be funded through an optional surcharge to be levied. Wasn't it Senator Shaheen who said that it wouldn't work on a voluntary basis?

SENATOR SHAHEEN: No, it was not me.

SENATOR HUMPHREY: Oh, maybe it was Senator Hollingworth candidly admitted or maybe it was Senator Currier, 'won't work on a voluntary basis'. In other words, if we give our constituents a chance to vote with their checkbooks, this won't work, so let's not give them a chance, let's just impose another tax, it's only a small amount, 25, 40, 60, who the heck knows in five years, 185 employees, you know darn well it is going to turn into a couple hundred employees. You might say it is not a lot of money, but by gosh in a middle of the recession, from my point of view, and I think the point of view of a lot of people, it's going to be the straw that breaks the camels back in terms of losing faith in our government. This is not the time to be doing this if there ever is a time. I suggest that there is a way of dealing with the problem. There is a technical solution to the problem in those towns where when you dial 911 the dispatcher can confuse your address with that of another from a neighboring town. I believe that there is a technical way of doing that in the local exchanges, it is a switching matter. You don't have to create a whole new bureaucracy in Concord and impose a tax on everybody that is going to grow and grow and grow to deal with this problem. So I am offering this amendment to make it voluntary. I think that it is a statement and as I anticipate its defeat, at least your constituents, our constituents will know that we denied them the opportunity to make payment of this charge an option. Freedom is about options and we have no right treading upon freedom except where it is utterly essential and necessary and there is no alternative and I suggest that this is not such a case. I hope that my colleagues will support the amendment and I would ask for a roll call vote, Mr. President.

Senator Humphrey offered a floor amendment.

4952L

### **Floor Amendment to SB 441-FN-A**

Amend RSA 106-H:7 as inserted by section 1 of the bill by inserting after paragraph VII the following new paragraph:

VIII. The method for determining the format of the optional surcharge on the telephone bill.

Amend RSA 106-H:9 as inserted by section 1 of the bill by replacing it with the following:

106-H:9 Funding; Fund Established.

I. The surcharge described under this section shall be optional.

II. The enhanced 911 system shall be funded through an optional surcharge to be levied upon each residence and business telephone exchange line, including outgoing wide area telephone service lines, PBX trunks and Centrex lines, trunks and lines serving cellular communications towers in the state, and semi-public coin and public access lines. The optional surcharge shall be contained within tariffs filed with the public utilities commission and shall be billed on a monthly basis by each local exchange telephone company. Each local exchange telephone company shall remit the surcharge amounts on a monthly basis to the enhanced 911 services commission, which shall be forwarded to the state treasurer for the enhanced 911 services commission fund. Such fund shall be continually appropriated to the commission and shall not lapse. The moneys in the account shall not be used for any purpose other than the development and operation of enhanced 911 services, in accordance with the terms of this chapter. Surcharge amounts shall be reviewed annually and if appropriate, new tariffs shall be filed with the public utilities commission reflecting the surcharge amount.

III. Imposition of the enhanced 911 services optional surcharge shall begin not later than 3 months from the effective date of this chapter, in order to provide adequate funding for the development of the enhanced 911 data base and other operations necessary to the development of the enhanced 911 system.

### AMENDED ANALYSIS

This bill establishes a coordinated statewide enhanced 911 system which will use the digits 911 as the primary emergency number. The 911 system is to be funded through an optional surcharge which will be levied on each residence and business telephone.

SENATOR SHAHEEN: I'm not sure who can answer this question. Is it the understanding of the committee that worked on this bill that a voluntary system would not work because it would not provide continuous enough payment, is that the case? My second question is, did the committee discuss the idea of trying to put this out to bid to a private company?

SENATOR CURRIER: The answer to the first question is an optional charge would not raise the funds needed. We are assuming something here. We are assuming that people would opt not to take the service. The problem is, that in order to collect the data, you

have to have the money to collect all of the data that is necessary. That means from every subscriber. If Senator Humphrey is calling this a tax, then I would think that the Constitution of the State of New Hampshire would say that an optional thing wouldn't work because you would have to tax everyone equally, so I'm not sure that that is workable. There was testimony on behalf of AT & T and New England Telephone Company that indicated that a private enterprise system is not workable. I don't remember specifically why, but there was testimony that indicated both of those things.

SENATOR HUMPHREY: Senator Currier, did the Senator just say that this would not work on a voluntary basis?

SENATOR CURRIER: The bill as passed to the floor of the Senate would not work if it were optional, in my opinion.

SENATOR HUMPHREY: So is the Senator saying that too few people would choose to pay this surcharge?

SENATOR CURRIER: No.

SENATOR HUMPHREY: Well then, what is the Senator saying? It certainly sounds like that.

SENATOR CURRIER: What I am saying is, if out of the 660,000 people, if 10 percent didn't vote, it would mean the increase of that fee from 25 cents or 40 cents to more because the less people that participate the more costly it is going to be. So for example, if only half of them decided to go with it, it would be doubling this fee.

SENATOR HUMPHREY: Is the Senator not concerned by his own statements that some significant percentage, perhaps 10 to 50 percent would choose not to do this?

SENATOR CURRIER: Senator, I am more concerned about public safety here and anything that will deliver the public safety apparatus to an emergency more quickly and efficiently . . . I can't believe for one minute that you haven't gotten a call from someone on this issue, because I know of people who have called you.

SENATOR HUMPHREY: Yes. May I respond to that? A lady kindly called me and said "I have been put in charge of lobbying you", if you want to count that one, Senator, be my guest, but it is the only one.

SENATOR CURRIER: Just for the record, also if I may, this is not an Executive Department's floor amendment, it says on the top here, Executive Department's committee. The Executive Department's committee is not the author of the amendment, it is Senator Humphrey's amendment. Did I answer your question, Senator Humphrey?

SENATOR HUMPHREY: Very well, thank you.

SENATOR J. KING: The current system that we have now throughout the state is a voluntary system, for that local. Most everyone of those locals are there to support this program, if not all of them. None of them came in and opposed it. If that program was working as well on an optional basis or whatever kind of basis that you look at it as, the whole state, that is an optional basis. If that system was working as well as it should be working, we wouldn't even be talking about this. The system does not work the way it should work. You talk about having each town or local do their own enhanced system, it would almost cost them as much to do the enhanced system in their own town as it does to cover the whole state. They would each have to get one of the PSAP's and do the same kind of research and work that is done, and that is where the cost is involved to get it going, so that would be out of the question. I look at the whole picture like having a swimming hole or a pond or a lake or whatever you have that you swim in, and some places have lifeguards and some don't have lifeguards. You can rest assure that the ones that don't have lifeguards are at a greater risk then the ones that do. I think that this year for the cost and the way that it is being handled, it would be a minimal cost, and I am as much opposed to taxes as any of the Senators in here and I am as much opposed to taxing the locals as much as anyone here. In fact, I am quite interested in sending some back to them. But I do think the only way that you are going to get an enhanced system is that if it is done statewide. When you do that, you eliminate a lot of cost because you end up with one PSAP system. Thank you.

SENATOR BASS: Senator Currier, I apologize for not having heard your opening speech, but if I picked up a phone in my house and dialed 911 what would happen?

SENATOR CURRIER: Do you have 911 service?

SENATOR BASS: I don't know. If you picked up any phone in New Hampshire and dialed 911, what would happen and what could happen — what are the options, I guess?

SENATOR CURRIER: The scenarios are you would get a 911 operator that would ask you what type of emergency that you had, or you would get nothing, or you would get an operator in Tewksbury, Massachusetts, Burlington, Vermont or someplace in Maine. That is a fact. You might, if you are damn lucky, get a Manchester operator, but that is very unlikely. So the thing is, your call would then have to be directed somewhere to another appropriate public safety place.

SENATOR BASS: Under the passage of this bill what would happen if you picked up a phone and dialed 911?

SENATOR CURRIER: If this bill was implemented and we did an enhanced 911, you would pick up a phone and dial 911 and you could drop the phone and drop dead right then and there and they would know exactly where you were.

SENATOR BASS: If you drop dead, do you need the passage of this bill?

SENATOR COHEN: I rise to speak in opposition to the floor amendment. It seems that the same arguments for having optional 911 or the arguments we have heard for having optional public education. Government exists for a reason and that is to serve the people of the entire state. The same reason that we have the entire community support public education or the reasons that the entire state of New Hampshire ought to support 911. It just seems to me, more than a little hypocritical to be pro-life and to be against this measure which can obviously save so many lives at very minimal cost. The people of the entire state deserve this service and we need to spread the cost and it is a very, very minimal cost here. It just seems to me that if one is going to be pro-life, beyond conception to birth, one ought to support this measure and oppose the floor amendment.

Question is on the Humphrey floor amendment.

A roll call was requested by Senator Humphrey.

Seconded by Senator Nelson.

The following Senators voted yes: Roberge, Podles, Humphrey.

The following Senators voted no: Oleson, W. King, Heath, Fraser, Hough, Dupont, Currier, Disnard, Blaisdell, Bass, Pressly, Nelson, Colantuono, McLane, J. King, Russman, Shaheen, Delahunty, Hollingworth, Cohen.

Yeas 3

Nays 20

Floor amendment fails.

SENATOR HUMPHREY: Mr. President, if my colleagues will examine page eight, line 17 of the bill they will see that there are certain cooperations required of municipalities. That portion of the bill reads: "each municipality shall cooperate with the commission to establish a customer data base containing information to identify the location of each telephone number within the municipality". Mr. President, article 28 of the Constitution says that "the state shall not mandate or assign any new or expanded or modified programs or responsibilities to any political subdivision in such a way as to necessitate additional local expenditures by the political subdivision, un-

less such programs or responsibilities are fully funded by the state or unless such programs or responsibilities are approved for funding by a vote of the local legislative body at the political subdivision". Mr. President, I make a point of order that this bill violates the Constitution of the State of New Hampshire.

SENATOR DUPONT: Senator, you can do that, I guess. I am not empowered to make a ruling on this one way or another relative to the constitutionality of it. This bill will be referred to the Senate Finance committee and they will have to make a determination down there whether the bill ought to be going forward on the basis of the financial information that is presented to them in the legislation.

SENATOR HUMPHREY: Mr. President, what do the Senate Rules require of us or of the President, in the case of a point of order being lodged?

SENATOR DUPONT: Senator, it would require the President to rule on the point of order; and what I just said to you was that based on the question that you just posed, I am not a legal authority that is capable of answering your question as to the legality of this piece of legislation; however, I did also say that this legislation will be referred to Senate Finance and if you would like us to make a determination as to whether or not it violates that section of the constitution, then it is appropriate for Senate Finance to consider that as part of their deliberations.

SENATOR HUMPHREY: If I may respond, Mr. President, that seems like a reasonable solution, but I do think that this is a terribly important point. We just heard it from the President of the United States. And didn't we all applaud when he said that the federal government shouldn't impose programs on the states without funding. We have heard it and we have all said it ourselves with respect . . .

SENATOR DUPONT: Senator, the point of order has been made and it will be dealt with.

SENATOR HUMPHREY: I just want to say, Mr. President, that if it is not dealt with in committee, I am going to raise the point of order again and we better figure out a way of dealing with it, because if we can't deal with points of order, we can't do much of anything.

SENATOR DUPONT: Senator, I think that your point of order was appropriately dealt with.

SENATOR DISNARD: Senator Humphrey, am I hearing you say that if that portion was eliminated that you would support the bill?



SENATOR HUMPHREY: Indeed not, I didn't say that.

SENATOR DISNARD: Thank you, thank you.

SENATOR HOLLINGWORTH: Senator Humphrey, are you aware that the Municipal Association who are the watchdogs of any 28-A questions supported this legislation and did not believe it raised a 28-A question?

SENATOR HUMPHREY: Would you believe that I couldn't care less what the Municipality Association thinks. I care what my constituents think and I care about their tax burdens, and would you believe, that I care about giving them freedom?

SENATOR NELSON: Mr. President, if I had an amendment for this bill, I could bring it down to Senate Finance and talk about mending this for the bidding process or whatever we thought? Couldn't we again go down there and bring our amendment to them?

SENATOR DUPONT: Senator, that is correct. I know of no Senate committee that would not respond to a request for an amendment when it is presented. They obviously will have to weigh the benefits of the amendment before they put the committee's name on the amendment, but certainly, I am sure, that Senate Finance will take into consideration anything that you bring down to them.

SENATOR NELSON: Thank you, sir.

SENATOR COLANTUONO: If a Senator wanted a ruling from the Supreme Court on something like this, how would any Senator go about trying to get that?

SENATOR DUPONT: Senator, I believe the ruling would require you to lay the bill on the table and draft a question, which is the normal process by which we send things over to the Supreme Court.

SENATOR MCLANE: If such a request of the Supreme Court was prepared, wouldn't it be true that the majority of this body would have to rule on whether that question went to the Supreme Court?

SENATOR DUPONT: That is correct, Senator. It would require a resolution requesting an Opinion of the Justices.

SENATOR J. KING: I want the total Senate to know that this paragraph was discussed quite a bit in the committee. So it was not looked at and forgotten about. It was discussed, and we thought that this was going to be cooperation, it was not mandating anything to them, that is why we went along with it.

SENATOR DUPONT: Senator, I believe for those of us who have been around here a long time, we understand how fine the line is that we walk in terms of mandates. There are some things that the

Municipal Association has had to deal with as well as our constituents, having determined that it is in the benefit of the state to do, even though it could, if you make them draw the fine line, be considered a mandate back to the cities and towns.

Referred to Finance committee (Rule #24).

**SB 365**, an act prohibiting abortions based on sex selection. Judiciary committee. No Recommendation. Senator Colantuono for the committee.

**SENATOR COLANTUONO:** Upon the occasion of execing this bill, on a motion made of inexpedient to legislate, the committee vote was two to two with one being undecided, so therefore, there is no recommendation from the committee.

Senator Humphrey moved that SB 365 an act prohibiting abortions based on sex selection, be ought to pass.

Recess.

Senator Hough in the Chair.

**SENATOR HUMPHREY:** Mr. President and my colleagues, the picture that I have asked each Senator to examine is not one of these abortion pictures, it is instead a perfectly healthy and perfectly live 18 week old human being. It is a photograph from the cover of Life Magazine of some years ago. When you look at that you can clearly tell that that is a human being, 18 weeks old is about half way through gestation. The photograph, I think, speaks for itself, but I would like to state for the record what I believe is self evident. That is that the offspring of human beings are human beings. That every abortion kills a human being. That isn't theology, that is science. The offspring of human beings are human beings. The object of each and every abortion is to kill a human being. In the heat of political debate, unfortunately, the obvious is often overlooked, for that reason I have passed around this photograph. You can see easily that it is a human being and it is of the human species. You can see that this little boy or girl is one of us, one of our family. Samuel Johnson the famed 18th century Briton said it so very wisely, "mankind more frequently requires to be reminded than informed". That is my purpose, to remind, because one needn't inform, one knows that the offspring of human beings are human beings, but I remind my colleagues of that fact, that scientific fact. It is also a scientific fact that each and every human being from the moment of conception is a unique human being, a unique individual. Never before in human history has there ever been one like that new human being and never again in history, except in the case of identical twins. Never again in history can there be another unique being like that. It is

unique, it is distinct, it is individual. I submit to you as a matter of something that is self-evident, it is a human being. Since mankind cannot beget anything but human beings, it is distinct from its mother, it is distinct from its father, it is distinct from all of those who have come before and all those who will follow. Under our law as currently interpreted by the courts, you may kill, I want to make sure all of the children are gone in this chamber because I don't want them to hear this. I don't know how I am ever going to explain it to my son when he begins to ask about the meaning of this word, abortion. But under our law you can kill this child at 18 weeks or at one week or at 40 weeks. Under our law you can kill this child the day before he or she is born for any reason or for no reason. One is perfectly at liberty to take human life at any point in gestation, even after viability, if viability has any relevance to human rights. Against this background, I ask the committee to consider this bill. The bill is carefully drafted and proscribes only abortions performed solely as a means of sex selection. It applies sanctions against the person performing the abortion, not against the patient. The bill very carefully protects the anonymity of the woman in every proceeding and in every action. I want to say that this bill is a copy, frankly, of bills that have withstood constitutional scrutiny. Bills enacted by other states which have withstood constitutional scrutiny. Under the bill, any person on whom an abortion was performed as a means of sex selection, may maintained an action against the person who performed the abortion, and so may the father of the unborn child, so may one of the child's grandparents, one grandparent. The bill prescribes \$10,000 in punitive damages and treble whatever actual damages the plaintiff has found to have sustained. Testing to determine the sex of the unborn child is becoming increasing commonplace. May I also point out as something that is also self-evident, that as medical sciences advance, the date at which the sex of the child may be determined is earlier and earlier. I'm sure that my colleagues will agree that even if one abortion is performed in New Hampshire as a means of sex selection, that is one abortion of that kind too many. I believe that well, given the fact that it is becoming impossible earlier and earlier in gestation to determine the sex of the child that it is well to have such a law as this on the books to insure that abortion providers are careful in screening out those who seek sex selection abortions. This bill would present the most modest and most eminently defensible restriction on the performance of abortions. I urge the Senate to support it. Mr. President, we recently celebrated the birth of Doctor Martin Luther King, one of the foremost leaders in this country in the struggle for human rights for all human beings. Let's recall that even the Supreme Court once sanctioned slavery just as it sanctions abortion today. The Supreme

Court once ruled that human beings who just happened to be black were less than worthy of the full protection of the Constitution. They were property, disposed of at the will of the owner. Such is the status of unborn human beings today. Ladies and gentlemen, what vast waste of precious human lives we commit when we invent facial untruths to read certain classes of human beings out of the human race and how greatly we diminish ourselves when we accommodate such untruths. Mr. President and my colleagues, this is a bill that would restrict sex selection abortions and sex selection abortions alone. It is no secret that I would prefer to do far more, but this is a tiny, tiny eminently defensible restriction and I urge the Senate to support this bill.

SENATOR MCLANE: Senator Humphrey, I guess because I am the only identical twin in this room, I am the only person who isn't unique, so I get to ask the first question. First of all, I want you to look at the picture that you passed around, and I want to ask a question that perhaps a female could ask of a male about this subject, which is, do you think that that picture is upside down?

SENATOR HUMPHREY: I don't know. But what difference does that make?

SENATOR MCLANE: I think that it makes a lot of difference, because I think that it shows that sometimes people don't know everything about a subject that they think that they would . . .

SENATOR HUMPHREY: I admit it.

SENATOR MCLANE: My question is, if you don't know if it is upside down, if you say that that is an 18 week old fetus, can you tell whether it is a boy or girl? I thought that for awhile I could and then I realized that it was the umbilical cord. But I want to ask that question. Can you tell from looking at it whether it is a boy or a girl?

SENATOR HUMPHREY: I think I can, but the quality of this reproduction, this Xerox, is not very good.

SENATOR MCLANE: And then I guess the last question that I would like to ask is if you can't tell at 18 weeks by looking at it, and given the fact that there are no second trimester or after 16 week abortions ever performed in New Hampshire, why would you put in this sort of bill, and can you name any instance in New Hampshire where such a specter has happened of sex selection?

SENATOR HUMPHREY: I would respond to the question by stating that anyone, any practitioner, is perfectly at liberty to kill this child at the age of 18 weeks, perfectly at liberty to do it at 36 weeks, perfectly at liberty to do it in the last day of gestation, perfectly at

liberty to do it throughout gestation for the purpose of sex selection and that is what this bill seeks to proscribe.

SENATOR MCLANE: I guess I will have to ask another question. I didn't think that I had to. My question is, do you have any evidence that this has ever happened in the state of New Hampshire?

SENATOR HUMPHREY: I have not. But there is every evidence to know that it can be done with perfect legality and as medicines ever advances, the date by which you can determine the sex of a child, there are going to be that temptation. I think that this is a defensible bill that precludes anyone from falling for that temptation and for any practitioner from performing such an abortion.

SENATOR DISNARD: Senator Colantuono, I am asking you because you are the one who presented the bill. Is your committee convinced that that is all that this bill does? I am not an attorney that is why I asked you, also besides you being the presenter for the committee. In reading this I have doubts that that is all that it does. Could this bill be interpreted as saying no abortions in this state?

SENATOR COLANTUONO: Senator, I don't see any way that this bill could be interpreted that way, but I would be happy to entertain someone who could convince me otherwise.

SENATOR DISNARD: Thank you.

Recess.

Senator Dupont in the Chair.

SENATOR BASS: Senator Humphrey, do you believe that abortion is murder?

SENATOR HUMPHREY: Is what?

SENATOR BASS: Is murder?

SENATOR HUMPHREY: Well I choose not to use that word, but frankly, that's a human being, when you kill it, it is dead. I don't choose to use the word murder because I don't think that it advances the debate.

SENATOR BASS: Senator Humphrey, what are the penalties for intentionally performing an abortion as a means of sex selection in your bill?

SENATOR HUMPHREY: The penalty is . . . the bill prescribes a \$10,000 . . . remember now the penalty is assessed against the person who performs the abortion and that person could be fined up to \$10,000 in punitive damages and to the extent the plaintiff is found to have sustained actual damages, treble such damages.

SENATOR BASS: Senator Humphrey, I'm intrigued by the penalty provision of this bill. Now bear in mind that I was not involved in the public hearings. I haven't been involved in this issue for a while, but you in essence have said sort of circumstantially, that you feel that abortion is a form of murder and yet for committing murder you are suggesting that the penalty be limited to \$10,000 in punitive damages. Now if abortion is really murder, why aren't you recommending a life imprisonment or capital punishment or some such punishment that would reflect a commitment on your part to a penalty to fit the crime?

SENATOR HUMPHREY: Well Senator, it is an imperfect world. At the moment the Supreme Court has found that one is not a human being until one, for purposes of the protection of the Constitution, until one passes through the birth canal. And laboring under that bit of studied ignorance on the part of the Supreme Court, one is forced into these torturous constrictions. It is all part of the intellectual dishonesty of the denial of the humanity of the unborn. I am doing my best. This is a minimal bill and I hope that Senators will support it.

SENATOR SHAHEEN: Senator Humphrey, as you point out, you have no evidence that sex selection, that abortions are done for sex selection, because there is no evidence that abortions are done for sex selection, in anything more, but very rare and very isolated cases. The fact is as Senator McLane pointed out, you cannot get an abortion in New Hampshire after the point in which the sex of a fetus can be accurately determined. I can speak from very clear experience on that issue. Because I had a baby after amniocentesis was done and that was done not to determine the sex of the baby, it was done to determine whether that baby was going to be healthy. I was told that under no circumstances could I get an abortion in the state of New Hampshire, not even in New England. I would have had to go outside of New England to get that performed. This bill is simply another attack on a woman's right to choose on this issue. I think George Bush put it very aptly earlier this afternoon when he said, "government should not come between a woman and her doctor". I think that is where this decision should be made. It is within the privacy of the family.

SENATOR NELSON: I just want to say something to my colleagues and maybe to anyone who wants to listen. I have been 10 years in the legislature and for 10 years I have a record. It is clearly just as pro-life and anti-abortion as Senator Humphrey. I am the member of the committee that abstained on the vote, because I think to even suggest this topic is an affront to all of us, to all people

in the state, and that is not a criticism of the Senator who brought the bill in. It begs the question of enforcement, so I am in a dilemma here. I am in a dilemma because of this, if I were to cast my vote against it, people are going to say, oh my god she is on defense, she has weakened and they have gotten to her. If I go the other side, they are going to say, oh my god, we have scored a victory, she finally listened to us. So I come to you today to let you know that there is a part of the bill that I cannot support. So I say to myself, what do I do? I can approach the sponsor of the bill and I could try to put an amendment on the bill, and we all know that this bill isn't going anywhere out of the Senate Chamber. So I have a choice. And that is to either vote this thing up or down. I would just share with you and thank you for your kind patience. On page two of the bill, lines 12-17. Actually lines 15-17 where it says "nothing in this section shall construe to prescribe the performance of an abortion because the unborn child has a genetic disorder", which is sex link. Having done a little bit of research, and I would thank the legal counsel, Mr. Paul Alfano and my intern, Johnathon Perch. This means that the exception would be if it was cystic fibrosis or even diabetes and there is a list of others. I just can't support that part of the bill. I want to be on record that I don't support abortion. If I vote against the bill I don't want to change my position against abortion, but I just feel that in this instance with no enforcement, number one in the state, there is no way the bill can be enforced. Number two, there is no medical facility in the state of New Hampshire that performs an abortion after 18 weeks and you determine the sex of the baby after this. Also, because I strongly object to page two, lines 15, 16 and 17 of the bill. I appreciate your listening to me. I am sorry to bring you my decision making problems to the Senate floor, but I wanted you to know that there was a specific part of the bill that I don't support. Thank you, Mr. President.

Senator Hough moved the question.

Adopted.

Recess.

Out of recess.

Question is on the motion of ought to pass.

A roll call was requested by Senator Humphrey.

Seconded by Senator Blaisdell.

The following Senators voted yes: Heath, Roberge, Nelson, Colantuono, Podles, Humphrey, J. King, Delahunty.

The following Senators voted no: Oleson, W. King, Fraser, Hough, Currier, Disnard, Blaisdell, Bass, Pressly, McLane, Russman, Shaheen, Hollingworth, Cohen.

Yeas 8

Nays 14

Senator Hough moved inexpedient to legislate.

Adopted.

SB 365 is inexpedient to legislate.

### ANNOUNCEMENTS

SENATOR HOLLINGWORTH (Rule #44): I rise to bring a problem that was brought to my attention the other day and I hope that you will find this as much of a problem as I have. Last year many of you realized the problems that we went through trying to find money anywhere and everywhere. We asked every agency if there was any money to help us get through the budget crisis and if they had any money could they help us? We also made that question to the courts and asked them if they could help us find any revenue so that we could get through our budget crisis. The word came back that they had no money, no availability. Well I have learned that the court is planning to take money from what was called the Court Modernization Fund and fund the two new judges in the beginning of 1993. Now if our money isn't that good, right? We are all saying great. Well, not when you realize where the money is coming from. What was the court modernization set up for? The court modernization took money from the penalty assistance. We had 20 percent from penalty assistance and out of that 20 percent, 15 went to Police Standards and Training and another two percent went to victims' assistance and another three percent went to the court modernization. Now that money was not intended to be used for anything else. We heard testimony from the courts. The reason that they wanted that money for the court modernization was because they thought that if they had computers and fax machines and all of those other nice modern pieces of equipment they could process the cases quicker, they could get the cases through the courts better and they could reduce the cost of the courts. None of it, not once, and I was there for the testimony, did I ever once hear them say that they needed the money for new judges. The reason why we only appropriated one judge last year even though we thought that we needed four was because we knew we didn't have the money. We acted, though we felt it was appropriate to have four, we felt that we could not do it. So this body and the House said, 'sorry folks, we will give you one, you can't have anymore because we don't have the money'. Well they have decided that they can fund it through this



mechanism which would be the court modernization. I would like to read to you what the law says on that. It says: "There is established in the state treasury a separate fund to be known as the Court Modernization Fund. The Supreme court shall use these monies in the fund for the development and the upgrading of the judicial branch". There is mention of judges. Now we have problems. Right now if you talk to anyone over to Police Standards and Training they will tell you that they are broke and they need money. If you talk to the victim assistance and they are telling you that they are broke and that they need money and yet we have the court taking money out of the court modernization fund that was earmarked for just that and they are using that money to appropriate two new judges. Now if ended just there we have two new salaries, but it doesn't end there. We also need to have support staff, which is one of the reasons why we didn't pass it. A support staff for one clerk is \$29,320. A court reporter is \$35,724, we need three of those and we need one clerk. I mean, I hope that you are half as outraged as I am. I called the court the other day and asked if this was true and I was told that it was. I had Mr. Russell, from the LBA call over there and he was told the same thing. Jim Brickner said that the court is looking into funding two associate justices beginning in 1993 from the court modernization fund. Now I don't know whether any of you are as upset as I am, but I worked hard and I know that a lot of you and those of you on appropriations and all of the rest of you worked hard to fund that budget in a way that we felt was just. Now to have the courts going through this back door process in which they are taking money that was not earmarked for that, I hope that you will ask, as I am going to ask that Senator Dupont set up a study committee to investigate this. No one has supported the courts more than I have. I have been 100 percent behind them every time they have asked me in the 12 years that I have been here, 100 percent in everything that they have asked me. I told Nina Gardner yesterday, that there had better be a damn good explanation. I just would hope that the rest of you are just half as outraged as I am and that you will go to Senator Dupont and call for an investigation into this.

SENATOR NELSON (Rule #44): I am trying to think of how to say this politely. I rise because I just wanted to bring to the body's attention the fact that there were four republican Senators and all of the democratic Senators that didn't have a carnation today. I want to say that this President that was here today is the President of the United States and there is only one of them. I want to say that there was a great miscarriage of justice here in that four . . . I just want to say that never in my 10 years have I ever seen such rudeness extended to the Senate where only six or seven members were brought

out of this body when there were ranking republicans in the room. I understand hardball politics and all of those kinds of things, but let's face it, he is the President of all of us and I thought it was just a bit of rudeness on the part of those involved to not even have the other four republicans join them. I understand and I just want to make it clear that I know that it is not the Senate President, Ed Dupont, because when Ed's involved all of us go. Although I just want to say this in closing. Although I have tried to make a little bit light of this in a nice way, somehow at some level the common courtesies of life have passed us by in this country and in the state of New Hampshire when a ranking Senator and several freshmen were totally overlooked, there is something wrong with the process. Those poor republicans that were here, they can't say anything, because they might lose their chairs.

SENATOR DUPONT: Senator, if I could respond, I want to make it clear to the body that the arrangements of moving the President through this building today were not anything that I was privy to. The issue of bringing in the members that were supporting the President to have their picture taken was not a decision that I made, I would have loved to have had the whole Senate there and in fact, I would love to have had the President come in here, that request was made, but given the physical problems in doing that a decision was made that he would not come into the chamber. For whatever it means, I can't offer the apology because I wasn't responsible for the arrangements, those were in the hands of another leading republican in this body, in this building. I guess the complaint should be appropriately addressed to those that are responsible.

SENATOR NELSON (Rule #44): Wait until a democrat gets into the Governors office and the Presidents office, we'll make sure that all of you people get invited.

SENATOR DELAHUNTY (Rule #44): While Senator Nelson is on the subject of rudeness, I guess I would just like to publicly express my concern for the fact that a former Governor was brought into the House Chambers without a proper introduction. I think that we all feel the same way, that former Governor John Sununu should have been publicly introduced properly. Thank you.

SENATOR DUPONT: Senator, I will assure you that we will be addressing that also, I think that certainly was inappropriate whether you agree with him politically or not or whatever feelings you might have about him, I think that we have always shown that courtesy to Governors, whether they be republican, democrat or independent or

whatever. That is a courtesy that both the House and the Senate have always extended to Governors. I am hoping that it was an oversight and that it was not deliberate.

SENATOR DUPONT: To respond to Senator Hollingworth, if I may, to your request, I think that if that has been made in a manner that it is appropriate, then I would ask that the Senate Finance committee when they go through the supplemental budget that they take a very close look at those transactions that took place and the court budget is a part of that, because that is the role that they are supposed to be playing at the present time. I think that it is appropriate that they look at that and I am sure that they would be willing to work with you on it.

### RESOLUTION

Senator Delahunty moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that the bills ordered to third reading be read a third time by this resolution, all titles be the same as adopted and that they be passed at the present time; and that when we adjourn, we adjourn until Thursday, February 13, 1992 at 1:00 p.m.

Adopted.

### LATE SESSION

Senator Currier moved that we adjourn until Thursday, February 13, 1992, at 1:00 p.m.

Adopted.

Adjournment.

*February 13, 1992*

The Senate met at 1:00 P.M.

A quorum was present.

The prayer was offered by the Rev. David P. Jones, Senate guest Chaplain.

*You are very good people — all of you — each of you. Thank you for what you are giving to us by doing what you do here. I would think that going from Pat Buchanan to President Bush to Governor Clinton — all within 48 hours could expose even the most seasoned public servant to a severe case of political whiplash . . . so let me pray with you. Gracious God, may the gentle power of your just and compassionate love fill this place and these people this day. Pull up your chair; O Lord and have a seat. Amen.*

Senator Oleson led the Pledge of Allegiance.

## INTRODUCTIONS

### HOUSE MESSAGE

The House of Representatives is ready to meet with the honorable Senate in Joint Convention for the purpose of attending to the remarks of the honorable William Clinton.

Recess.

Out of recess.

SENATOR DISNARD: Mr. President, Senators, my peers, staff and visitors, I have had many highlights in my life, but I don't know when I have had a highlight when a visitor from our party has received such an ovation in a Joint session. I am also pleased without giving a speech just to introduce the Governor, Bill Clinton and his wife Hillary.

GOVERNOR BILL CLINTON: Well a lot of you were in the other chambers, so I won't bore you with another speech, probably Hillary should speak. It would be better anyways.

SENATOR DUPONT: I asked her and she said no.

GOVERNOR BILL CLINTON: I don't want to sell you anything else. I just wanted to come by and say hello to all of you, but I do say this, that I have had a wonderful time in state government in the last decade. Some of the putting off of more responsibility on us was not all bad because we do a lot of things better than the national government does. But I do think that in the next few years we have got to have some better balance in who does what, I mean there is just a limit to what all of us can do, being asked to be responsible for education and all of these other issues with all of these mandates coming down. I think that the opportunity we have to revitalize the economy and to establish a new partnership with state governments is quite exciting. It could be a lot of fun to be involved in the struggles of the 1990's if we think that we are at least moving in the right direction. I think what has depressed so many people is the absence of the sense of momentum that we are not on any kind of path, that we are not on a common journey. I don't think that anybody underestimates the complexity or the difficulty of our tasks, but at least if we were involved in a common agenda, it would be exciting and involving and I think that it will make a difference. That is what I try to do, just sort of talk of what I think of as a brand of common sense based on my experience doing what most of you have done for the last several years. I had a wonderful time here today and I thank you for your courtesy. Thank you.

**COMMITTEE REPORTS**

**HB 1053-A**, an act relative to state revenues and expenditures. Finance committee. Ought to Pass with Amendment. Senator Blaisdell for the committee.

Recess.

Out of recess.

**4969L**

**Amendment to HB 1053-A**

Amend the bill by replacing all after the enacting clause with the following:

1 Supplemental Appropriations. In addition to any other sums for the fiscal year ending June 30, 1992, the following appropriations are hereby authorized to the following departments and agencies. Said appropriations shall be a charge against the funds as specified in the individual appropriation:

02 Admin of justice & public prtn

16 Department of corrections

03 Division of adult services

02 Bureau of security

01 Security

18 Overtime

56,634

60 Benefits

5,097

92 Inmate wages

30,000

Total

91,731

Estimated source of funds for

Security

General fund

91,731

Total

91,731

02 Admin of justice & public prtn

16 Department of corrections

03 Division of adult services

06 Bureau of health services

03 Medical dental

93 Outside medical services

D 607,143

Total

607,143

Estimated source of funds for

Medical dental

General fund

607,143

Total

607,143

Total		698,874
Estimated source of funds for		
Department of corrections		
General fund		698,874
Total		698,874
05 Health and social services		
01 Dept of health and human svcs		
02 Div of public health services		
04 Family and community health		
02 Special medical services		
94 Catastrophic illness program	112,500	
Total		112,500
Estimated source of funds for		
C&Y title IVE grants		
General fund		112,500
Total		112,500
05 Health and social services		
01 Dept of health and human svcs		
03 Div for children & youth svcs		
02 Bureau of children		
04 C&Y title IVE grants		
41 Audit fund set aside	196	
90 Foster care	391,080	
Total		391,276
Estimated source of funds for		
C&Y title IVE grants		
00 Federal funds		195,736
05 County funds		48,885
General fund		146,655
Total		391,276
05 Health and social services		
01 Dept of health and human svcs		
04 Division of human services		
01 Directors office		
01 Administration		
41 Audit fund set aside	44	
20 Current expense	88,889	
Total		88,933
Estimated source of funds for		
Administration		
00 Federal funds		46,107
General fund		42,826
Total		88,933

## 05 Health and social services

## 01 Dept of health and human svcs

## 04 Division of human services

## 04 Financial grants

## 05 Medical grants

41 Audit fund set aside 7,337

90 Provider payments 14,673,144

Total 14,680,480

Estimated source of funds for

Medical grants

00 Federal funds 7,343,908

General fund 7,336,572

Total 14,680,480

## 05 Health and social services

## 01 Dept of health and human svcs

## 04 Division of human services

## 04 Financial grants

## 06 Nursing services

41 Audit fund set aside 853

91 Home nursing services 1,706,142

Total 1,706,995

Estimated source of funds for

Nursing services

00 Federal funds 853,924

05 County funds 426,535

General fund 426,535

Total 1,706,995

Total 16,980,184

Estimated source of funds for

Dept of health and human svcs

Federal funds 8,439,675

General fund 8,065,088

Other funds 475,420

Total 16,980,184

Total appropriations as included in 17,679,058

Category 02 and category 05

Estimated source of funds for

Category 02 and category 05

Federal funds 8,439,675

General fund 8,763,962

Other funds 475,420

Total 17,679,058

2 Division of Human Services; Support Enforcement Positions. The positions funded in fiscal years 1992 and 1993 by PAU 05, 01, 04, 02, 03 are exempt from any executive order of the governor relating to vacant positions and the 90-day drag placed on vacant positions by the fiscal committee beginning in October, 1991. Any funds transferred from PAU 05, 01, 04, 02, 03 to the department of administrative services as a result of positions made vacant under an executive order of the governor or the 90-day drag in fiscal years 1992 and 1993 shall be restored to PAU 05, 01, 04, 02, 03 as those positions are filled after the effective date of this act.

3 Effective Date. This act shall take effect upon its passage.

SENATOR BLAISDELL: The committee report on HB 1053 I want you to know, funds this supplemental budget only until April 1. The original bill that came to us in Finance, this bill was funded until June 30. The bill was referred to Senate Finance on February 4 and, I believe, on the following Tuesday, the 11th we held a public hearing. As I told you, this bill that was presented to the Finance committee would fund all areas of the supplemental budget until June 30. After receiving the bill we proceeded to work, thank god, before with the LBA's office and of course after we received the bill. After looking at the different categories that the House sent over to us, we tried to list what the critical areas of this supplemental were. As I say, through the help and concern of Charlie Connors and his LBA office and with the diligent work of Senator Hough we found that there were one, two, three, four, five areas of critical needs. Some of you have heard about these needs, especially catastrophic illness. I am sure that you have heard that health and human services, if we didn't fund certain parts of this budget by February 15 or February 20th that this state would come to an end. Well I want you to know that in this bill that you see as amended today, you will see the catastrophic illness that certainly ran out on January 30, 1992 is funded and you will find that foster care that was going to run out on March 14, 1992 is funded. You will find that health and human services administration that will run out on February 15 which has to do with the handling of food stamps which cost quite a bit of money, that is funded. Provider payments that all of you are certainly concerned with will run out on February 22, 1992, that is funded in this supplemental budget. Home nursing services, certainly is funded. I know that you have gotten a lot of calls on that, that is funded. It was going to run out on February 21. I want you to know that those things of critical need are funded. Also with the help of the LBA's office we found that there were possible places that we could be taking a look at in this budget, which is AFDC, nursing homes settlement, day care, mental health that won't run out of money until,



well, some won't run out until April 24. Nursing homes won't run out of money until April 24, day care certainly is not going to run out of money for a while and, I think, the mental health area is not going to run out of money for a while. So in the wisdom of the Senate Finance committee, after listening to people in the House Appropriations come over to us and say that there are four or five areas now that haven't been funded that have fallen through the cracks. Senator McLane of course came in and spoke and told us what parts of the budget that she was interested in, I suppose it was for 1993, the emergency management care. So as I said, we felt as a finance committee that we should take care of the things that have fallen through the cracks, but we have time to do that. Just as an example, when you think that maybe it is all over, it is not, because the House Appropriations committee today has another bill just like you are seeing today, HB 1025. Most of you probably feel that that has to do with the 1993 budget. Well I want to let you know that the bill says relative to budget adjustments for the fiscal year 1992 and 1993. So if you look through and want to pick up HB 1025, you will find that they have some more problems that we are going to have to address. I emphasize to you that we have taken care of the critical needs that you have been listening to from health and human services and catastrophic illness until April 1. It is funded if you pass this over to the House. From what I understand the House might concur with this and not even go any place, they will probably concur knowing that we have 1025. It will give us time to work on a new bill. No one is going to get hurt. The critical needs, as I have told you, will be met. Most of all I think that we feel, in the Senate, that to do what we are doing today, if you agree, is in the best interest of the Senate. I have told you about 1025, you should get a copy of it to know what is going on. I ask your support because I feel that it is a responsible position that the Senate has taken and we can take a hard look at other areas as I have told you, like AFDC. We have found that there are 25,000 cases of food stamps in the state of New Hampshire. People feel that that is only 25,000, but when you are talking about cases, you are talking about 2.7 per family. So there are many, many problems facing us in this state. Rather than just passing this over the way that they passed it to us, we felt that it was a responsible position to fund things to April 1, have the Senate, and I mean the whole Senate, take a hard look at what we have done, and go from there. That is my report, Mr. President.

SENATOR HUMPHREY: Mr. Chairman, what is the total amount of supplemental appropriations in this bill?

SENATOR BLAISDELL: I am pretty sure that it is 17. It is in the amendment on the side, page four. The total amount in this bill as

amended is \$17,679,058. The other bill that came into us, Senator Humphrey, I believe, it was close to double or triple to that, it was quite a bit.

SENATOR HUMPHREY: Well, looking at the House bill on the last page, am I looking at the bottom line, that says \$67,000,000?

SENATOR BLAISDELL: What you ought to look at, Senator, is the amended bill on page 11 of the calendar.

SENATOR HUMPHREY: Yes, I am trying to compare the two.

SENATOR BLAISDELL: Oh, okay, fine. The original that was sent over from the House was including federal funds, general funds and other funds, \$67,000,000. It was \$31,000,000 in federal funds and \$28,000,000 in general funds and what we call other is 6 point something million dollars.

SENATOR HUMPHREY: Well at first glance it might look like we are saving money, but I can't quite believe that. So the House Bill, am I correct, that the House Bill is intended to be the one and only supplemental for the rest of the year?

SENATOR BLAISDELL: I don't think so, Senator, because they are also sitting downstairs with 1025 now, so that is another one.

SENATOR HUMPHREY: Where does this supplemental process end?

SENATOR BLAISDELL: I guess when the Senate President raps that gavel and says go on home. I think that is when it ends, Senator.

SENATOR HUMPHREY: Well then, do I understand what the Finance committee has done is the following, it has chosen . . . what is the essential difference between this and this? You have reallocated some funds to programs which the committee thinks are more important, evidently, than the House thinks are important, is that correct?

SENATOR BLAISDELL: Well, let me say that I am sure that all of you have received cards on catastrophic aid, that fell through the cracks. The House came in and spoke to us and they wanted us to put that in in another amount and we all only put in \$112,000 to take us to, I believe, April 1.

SENATOR MCLANE: Senator Humphrey I have a question for you.

SENATOR HUMPHREY: Why are you picking on me, pick on him. I haven't said whether I am for this or against this, I am just trying to understand it.

SENATOR MCLANE: I have a kindergarten question for you and the question is, I guess what bothers me is that it is awfully easy to be against a bill such as Senator Blaisdell brings forward because you don't believe that we should be doing this spending. But I wish that you would be more specific. As I look at these funds, the explanation being that they are going to run out before April 1 and that is why this special appropriation has come forward. I wonder where you would cut and I guess that is my question. Would you cut nursing services or would you cut foster care? I guess I look at this and want to know where are you going to cut?

SENATOR HUMPHREY: Well, Senator, you must be sitting on a spring, because I haven't said anything yet whether I am for it or against it, I am simply trying to understand it. Does the Senator object to understanding?

SENATOR BLAISDELL: Senator Humphrey, you asked me why and I guess what I would have to say, the only answer that we feel is that April 1 is the answer. We also feel that with the many deliberations that will have to go on between now and then and after that, that I am taking a word out of your book, you know, you have told me that you are going to be there watching me pretty close and I want to be sure that I have done the right thing. I am going to deliberate a lot longer. I am not going to make hasty decisions anymore as I might have done before, and make sure that we have covered all the angles. That is the only answer that I can give you, Senator, but I thought that I was saving money by doing this. There are other areas of this budget that maybe we can pick up some money and not have to expend all of what the House wants us to do.

SENATOR HUMPHREY: What is, if I might draw the chairman's attention to page nine of the calendar, at the top under the first function, why are we spending \$30,000 on inmate wages?

SENATOR BLAISDELL: Well, I think that we have to pay the bill if the court tells us to do that, and certainly we have to pay it, if we don't we are going to be in conflict with the courts.

SENATOR HUMPHREY: What are inmate wages?

SENATOR BLAISDELL: I haven't been there lately, but maybe I am going, I don't know. Do you know how much they get paid, Ralph?

SENATOR HOUGH: Gordon, you know that the state prison is under a federal court order. When inmates are used for employment or labor, you are required to compensate. The hourly rate I don't know, but it is less than the union wage and when we use the inmates in this for their own good or for projects that we needed to be done, we

have to compensate them. Idle hands are the devils playground. We see them on the highways. They have to be paid. They have exhausted their appropriation because the case load at the prison is greater than we anticipated it to be in June. Thank you.

SENATOR HUMPHREY: In looking at the next function, outside medical services \$607,000. Can someone tell us why that account was so substantially underestimated in the budget process that now we are having to appropriate \$607,000? Was there an epidemic at the prison or what?

SENATOR HOUGH: The outside medical services would be depleted if we don't give this immediate supplemental appropriation because for example, there were two open-heart surgeries that were performed on inmates between last summer and today's date. It was very expensive. There are other types of high ticket medical services that were required to take care of the inmate population that were unanticipated, emergencies, medical procedures.

SENATOR HUMPHREY: Mr. President, I represent Senate district #17. My constituents have a right to be represented. We are being asked to pass a very large appropriations bill and I wish to be able to ask as many questions as I desire.

SENATOR DUPONT: Senator, you will have the chance, but there are other people that have other questions that they would like to ask. I think that it is only fair that they can get a chance to use the floor to represent their constituents also.

SENATOR HUMPHREY: The President is quite correct, I didn't observe anyone else seeking recognition, if someone else was, I apologize. Senator Blaisdell, the next function, foster care \$391,000 can we have an explanation of why that account was underestimated by such an amount?

SENATOR BLAISDELL: Go ahead, Ralph.

SENATOR HOUGH: The number of young people that are placed in foster care homes or foster care families has grown greater than the case load projections that were used when the biennial budget was passed in the spring of the year. You are going to find, if I may, Gordon?

SENATOR HUMPHREY: Yes.

SENATOR HOUGH: Medical grants on through the various numbers of lines on page four, that their local communities and counties estate confronted with ever increasing clients who have rights and entitlements to services because of their individual changing conditions. The more significant thing that you should know that we are

appropriating money to mail food stamps. We didn't anticipate in the spring of the year that our food stamp case load would now be 25,000 cases. As the economies downturn continues, more and more people are entitled and seeking assistance and they cannot be turned away. All of these classes that are in this piece of legislation are for accounts that have exhausted the appropriation for 12 months in January and February and March of this year. We are trying to get a handle on these things that we can't refuse to continue to fund. That doesn't mean that we would arbitrarily appropriate additional monies through June 30 on all classes until we clearly understand the ratification.

SENATOR SHAHEEN: Senator Blaisdell, is it my understanding or am I correct in understanding that the programs that are on here are those that the state is mandated to pay those increased cost and that is why we must pay them?

SENATOR BLAISDELL: Absolutely. Most of the things that you are talking about, Senator Hough just explained, are the most case loads. For instance, in 1991 we had 65,000 on medicaid, food stamps, AFDC, old age assistance, needy blind, today we have 82,000. I mentioned to you about food stamps, 25,000 units which is 2.7 people per unit, which is about 65,000 to 67,000 people. I can name you the whole thing. There were a lot of things that weren't done in this budget, AFDC. The House came into us and asked us to raise the AFDC allowance by \$444,000 more. We didn't do that, we want to pinpoint what is going on. The medicaid provider payments, they talked about that. There was not enough money in there to take care of the backlog. There are so many unsolved problems with this bill, we thought that it was in the best interest of the Senate and the Senate Finance committee to take a hard look at what appropriations will be in the next couple of months. We think that it is the right way to go. I am not responsible really for all of the food stamps that people are asking for. I wish to god that they didn't have to have any. I really worry about what is happening in the AFDC and the old age assistance. You have heard all of the stories, it is there, we have to address it because it is mandated, Senator Hough, I think, explained it.

SENATOR SHAHEEN: Thank you.

SENATOR DELAHUNTY: It is my understanding or point of further clarification that the majority of components made up and created and submitted in the supplemental budget did come out of the Governor's office, just a point of information.

SENATOR PODLES: Senator Blaisdell, are there any new positions funded in any of these catagories?

SENATOR BLAISDELL: There are not any new positions funded at all, Senator, not in any of the categories that I know of. You might want to look at section five. I believe that was the 19 positions that were there in the last budget.

SENATOR PODLES: Thank you, Senator Blaisdell.

SENATOR HUMPHREY: Senator Blaisdell, are there any appropriations here at all that are not related directly or let me put it this way, are there any appropriations in here at all that are not required by entitlements?

SENATOR BLAISDELL: I would say no, but I would have to defer to Charlie. Catastrophic illness is not, prisons.

SENATOR HUMPHREY: Well I'm sure everyone feels the distress at having to pass more appropriations on top of what we have already done and even more distressed to know that this is probably not going to be the last supplemental, so my question is, has the committee given any thought to taking substantial measures to save money elsewhere in government along the lines taken in our neighboring states where the government has been shut down for a period of time each week, employees in the public sector have been furloughed and laid off and measures of that kind?

SENATOR BLAISDELL: I'll say that the Senate Finance committee has not, Senator. All that we did was take a look at these other areas and where we could take a look at what monies have not been expended, where we might be able to borrow. I told you that we looked at the AFDC, nursing home settlement, day care, mental health clinics. We have done everything that we can and we want to take another hard look at it. That is the only place that we can look at it, it is up to you people whether or not you want to furlough people and put people out of jobs, that is up to you people. I, as the Senate Finance Chairman, am not addressing that.

SENATOR HUMPHREY: Well, Mr. President, I know of no way to rejuvenate or revitalize the private sector except to ease the burden of government. To ease it with respect to taxation, to ease it with respect to regulation. The essential problem we have in this state and in this country and Governor Clinton addressed it eloquently, is that government, although not in these words to be sure, is that government is and has been growing faster than the private sector with every passing year and taking a larger and larger percent of the output, slowly but surely, it is strangling our economy. Somewhere we have to draw the line. I have seen this supplemental process isn't unique to this legislature, I have seen this process before and it's chronic and it's habit-forming and there is no end to it except

to say end, and to vote no, and to ask the Finance committee to find some cuts. I ask for a roll call vote, Mr. President.

SENATOR MCLANE: Because I so totally disagree with the previous speech, I feel obligated to stand up and say that there is a floor and a need for government spending and if ever you could see it, it is right here in this supplemental budget. I would again challenge the Senator to be specific. Does he not want to fund foster care, does he not want to fund catastrophic illness? There's an option. I would ask him to be more specific instead of pontificate, because I am obligated to get up and stand up on the other side and say that this is the basic necessities of government, right here. It is money that is obligated, it is money that is already spent, it is the state of New Hampshire paying, probably late, its bill. Foster care is a perfect case in point. If you could meet some of these young mothers who are trying to do some good in this world, offering to take a 16 year old boy who has been in trouble with the law and bring him into their home and try to cloth him and feed him and keep him in school and to be three or four months late with the bill. I challenge you to find within this budget before you, someplace that a thoughtful and sensible Finance can cut, because I don't believe that it is there.

SENATOR COLANTUONO: Senator Blaisdell, I apologize for not asking this earlier, but sometimes you don't think of all of the questions you have until later. With regard to section two of the bill, can you tell me which positions are talked about in PAU 05, 01, 04, 02, 03?

SENATOR BLAISDELL: What page are you on, Senator?

SENATOR COLANTUONO: Page 11.

SENATOR BLAISDELL: Those positions were given to this department in the last budget. What this does, I believe, is take care of four positions. These have all been put through the last budget session. That is my answer.

SENATOR COLANTUONO: These are child support workers, I take it?

SENATOR BLAISDELL: Yes, absolutely.

SENATOR COLANTUONO: And what this basically says is that no matter what else the Governors order does, these cannot be cut?

SENATOR BLAISDELL: That is right. Exactly.

SENATOR COLANTUONO: And they are not reflected anywhere in these numbers here, is that right, because I couldn't find the PAU?

SENATOR BLAISDELL: No, they are not.

SENATOR COLANTUONO: With regard to the \$8,700,000 to the general fund that we are adding here, where is that money coming from?

SENATOR BLAISDELL: The balance is available, we do have it. We are not going to tax anyone else, it is there.

SENATOR CURRIER: I would just like to make two points. The first point is that this bill is nothing more than taking care of our obligations as a state. If you want to debate additional supplemental appropriations, the next bill which will probably be the Christmas tree bill, which has all of the other additional spending coming, will be the vehicle by which to do it. This bill basically takes care of the obligations to the state of New Hampshire through April 1. There will be others, however, Senator Humphrey, that will be coming along on that other bill and that is the time to really go through it.

SENATOR HEATH: I guess after Senator McLane spoke, I felt obliged to rise and explain why I am going to vote against this. I don't know that any of these particular revenue items, I shouldn't say revenue items, expenditures aren't appropriate. I haven't had a very long time, as none of us have to study it and those of us who don't serve on that committee are ill-equipped to do so given the complexity of the interrelationship between this and the other budget. We would be hard put to do our duties in our own committees if we were going to keep up to speed on this, given the amount of staff that the Senate Finance committee utilizes in its deliberations. I think it is easy for all of us to understand why we have to do a little blind faith on the budget, unless we serve on that committee. But aside from the facts that these may be appropriate expenditures, these all interrelate to the budget that we already passed and not all of those are appropriate expenditures. There is no attempt that I see in this to hold the original bottom line and to change priorities and priorities shift, it is an add on. The engine that drives this is a phony revenue that is going to drop right off of a cliff as soon as the election process is over. We are treating it as a continuing revenue. It is a fraud, it is not a continuing revenue and when the election is over and the President has gone back to Washington, whoever the President is, and New Hampshire is left in the dark and cold again, the medicaid will dry up and we won't have fuel for the engine that we are driving now. I would ask you not to add more cars onto it until we address the whole problem. The whole problem whether you believe in addressing it through cutting expenditures as I do or through raising appropriations. It ought to be addressed as a whole and not adding cars to a freight train that doesn't have an appropri-



ate engine, it doesn't even have a track. I would ask you to vote against this and send Finance back with the mandate that they do this as a whole and keep the bottom line as least where it is and certainly not add to it. That is probably asking the impossible, but let's not keep adding to a disaster that we all can see coming. There is nobody in here that doesn't understand that the wall is approaching swiftly and even though I am not going to be here when it hits, some of you will, and all of you ought to be considerate of those who will, and try to make it less of a disaster than it is going to be. Thank you.

SENATOR DISNARD: Senator Hough, if we don't pass this will there be any additional cost passed to my constituents and the constituents of other Senators in regard to nursing homes and county obligations?

SENATOR HOUGH: There are clients that are the financial liability of the local communities or the counties, in the event that we don't continue programs that are administered by the state, the federal 50 percent as well as the state contribution will not be there, but the people will be there. The people will have to be maintained by 100 percent local support.

SENATOR DISNARD: Thank you.

SENATOR MCLANE: Senator Heath, my one question is that if AFDC and food stamps and nursing homes are the bulk of this payment and they have doubled in the past year, where would you cut those three mandated programs?

SENATOR HEATH: Senator McLane, I didn't say that I would cut those three mandated programs, I wish that they weren't mandated, but I don't know that I would cut them. What I would do is to reach back into the enormous budget that we have and cut some of these vehicles out as an example instead of driving north and south of New Hampshire to qualify for 12,000 miles to keep him in position. I would get rid of the survey crews that survey every piece of land in this state 19 times and we don't have the money to do the projects that they are surveying. I would make cuts like that to balance this bottom line if these are a higher priority. Keep the bottom line the same and change the priorities, fine, but don't keep adding to the bottom line. Get rid of the lower priorities as you get the higher and newer priorities.

SENATOR MCLANE: I don't see, Mr. President, that any of those things, one of which I assume is part of the transportation budget, are in this bill that we have before us.

SENATOR DUPONT: Senator, I won't respond to this specific question about what is in the bill. Questions as to what is in this budget, ought not to be directed at the Chair. If you would like me to take to the floor and respond to that, I would be glad to do that.

SENATOR MCLANE: I was doing it only because I thought that he wouldn't answer it, but if he will I will be happy to listen to him.

Senator Delahunty moved the question.

SENATOR HUMPHREY: Since the question has been moved, we have only the option of asking questions, so Senator McLane, can you not understand the point of view expressed so well by Senator Heath and the point of view which I and my people's effort sought to express earlier. Namely, that yes we understand these are entitlements and we would be prepared, since we don't have any choice but to appropriate the money, no choice short of hoping that the federal government sinks below the waters of the Potomac river. We would be prepared to vote for these things if it were presented as a package with some cuts elsewhere. Does the Senator not understand that there are options beyond spending, spending, spending? That if you have to spend here, you can cut here. Does the Senator not understand that there is at least that potential, that possibility?

SENATOR MCLANE: Yes, I probably understand it, but when you bring up foster children and AFDC payments and food stamps, I don't understand that they are in this context of what is before us.

Senator Delahunty moved the question.

Adopted.

Senator Russman is excused for the day.

A roll call was requested by Senator Humphrey.

Seconded by Senator Nelson.

Senator Humphrey withdrew his motion for a roll call.

Question is on the committee amendment.

Committee amendment is adopted.

Question is on ordering to third reading.

A roll call was requested by Senator Humphrey.

Seconded by Senator Heath.

Paired votes: Senator Humphrey and Senator Russman.

The following Senators voted yes: Oleson, W. King, Fraser, Hough, Dupont, Currier, Disnard, Roberge, Blaisdell, Bass, Pressly, Nelson, Colantuono, McLane, Podles, J. King, St. Jean, Shaheen, Delahunty, Hollingworth, Cohen.

The following Senator voted no: Heath.

Yeas 21

Nays 1

Ordered to third reading.

### **SPECIAL ORDER**

**SB 312-FN**, an act relative to mandatory testing for health care providers and certain patients for communicable diseases. Public Institutions, Health and Human Services committee. Inexpedient to Legislate. Senator McLane for the committee.

SENATOR MCLANE: In the last 10 years there have been 250 AIDS cases in New Hampshire. One hundred people have died. It is estimated that there is anywhere between 1,000 and 2,500 HIV positive people in this state. The answer to this terrible and very frightening affliction is education and universal precautions such as we passed two days ago. SB 410 which we passed, is the answer to New Hampshire. It was supported by the Medical Society and the Department of Public Health, the Nurses Association, the New Hampshire Society of Epidemiologist and the Practitioners Infection Control. Mandatory testing is expensive and stupid. The reason that it is stupid is because it is a waste of money and extremely expensive. If we put one-tenth of that money into education and aid to those afflicted, we would be spending our money better. The mandatory testing as we remember well when Governor Sununu asked of us to have mandatory testing for marriage licenses is expensive. The first test that is done can cost at least \$20 and if it comes out positive, no good doctor would use that test without the second test, which can be \$104 per test. One of the most eloquent people testifying in opposition to this bill was a woman named Janet Gamsby who is an AIDS victim. What she said was "don't waste your money on mandatory testing, put it into education and help. Testing will not prevent the virus". The testing offers false security. There is a six to nine month window from exposure to when the test is positive and yet the bill does not make clear, do they want us to have yearly testing, monthly, daily? Universal precautions, research and education are the answer and not this bill. Thank you.

Senator Hough moved that we have SB 312-FN, an act relative to mandatory testing for health care providers and certain patients for communicable diseases, laid on the table.

Adopted.

### **LAI D ON THE TABLE**

SB 312-FN an act relative to mandatory testing for health care providers and certain patients for communicable diseases is laid on the table.

### **SUSPENSION OF THE RULES**

Senator Delahunty moved that the rules be suspended to put HB 1053-A, an act relative to state revenues and expenditures, on third reading and final passage at the present time.

Adopted.

HB 1053-A, is on third reading and final passage.

### **TAKEN OFF THE TABLE**

Senator McLane moved to have SB 312-FN an act relative to mandatory testing for health care providers and certain patients for communicable diseases taken off of the table.

Adopted.

SENATOR HUMPHREY: Well, Mr. President, I hope that I might have the attention of my colleagues because this is about a matter of deadly seriousness, namely a disease working its way through our society. A disease of perfect deadliness the size of which epidemic is yet not fully comprehended. Senator McLane has pointed out that in our state . . . well it is an epidemic. All of the witnesses at our hearing incidentally used the word epidemic, it is an epidemic of unknown proportions. Senator McLane advised us that there are somewhere between 1,000 and 2,500 unfortunate souls in this state that are afflicted with this disease. As far as we know it is perfectly fatal, but that is the factor of uncertainty, between 1,000 and 2,500. AIDS is a deadly and growing threat to public health and we hope that a prevention and a cure will be found, but in the meantime, we should treat this deadly disease with deadly seriousness. For too long, I would suggest, for too long government officials bowing to pressure groups have allowed bad politics to displace good preventive medicines. SB 312 requires mandatory testing for certain health care workers for AIDS as frequently, incidentally, Senator McLane, as the division in its wisdom, deems necessary. That could be every two years or every two months. We leave it up to the division. The bill requires the Division of Public Health to compile a list of medical and dental procedures that a health care provider with AIDS may not perform. Is that unreasonable? An infected provider may still practice. Someone with AIDS may still practice under this bill as long as she or he performs none of the proscribed procedures. That

is reasonable, that is more than reasonable, if you ask me. Information on health care providers may be released only to persons demonstrating a health related need and the release of such information is conditioned upon personal identities remaining confidential. Furthermore, there is a waiver provision, and get this, I mean this is bending over backwards. An AIDS infected health care worker, someone who is tested and re-tested positively for AIDS, may perform invasive procedures under three conditions, he has to inform the patient that he has AIDS. Shouldn't a patient know that? He informs the patient of the risk posed by AIDS in the context of the procedure and he obtains the written consent of the patient to perform this specific procedure. Now in the case of the employer, of an employee who has AIDS. An employer is required to report the disease immediately to the Director of Division of Public Health. If you are the owner of a clinic and you find out one of your health care workers has AIDS, you are required to report it to the state, to the division. That is reasonable. One would hope that would be done on a voluntary basis, but we shouldn't depend on a voluntary basis in the case of a deadly disease, it seems to this Senator. Furthermore, the employer of a health care worker infected with AIDS is required to inform each of the patients of the infected health care provider that the patient may have been exposed to the disease. If the health care worker is self employed and learns that he has AIDS, he is required immediately to notify the Director of the Division of Public Health. If someone finds out that he has AIDS and he is a health care practitioner, he is required to report that to the Division of Public Health so that the division can tell that practitioner which procedures that he can perform and which he may not. A health care provider who knowingly fails to notify the division that he has AIDS, shall have his license revoked or suspended whichever is most appropriate in the judgement of the division, Senator McLane. Mr. President, some will argue that health care workers are careful to guard against infecting themselves and their patients. In reality, we know that some providers will be more careful in their personal and professional lives than others and some will be less careful and a few will be careless. Is there a precedence for this legislation? Yes there is. For example, regulations of the Division of Public Health in our state forbid persons infected with a communicable disease that can be transmitted by foods or has an acute respiratory infection or an infected wound, may not work in a food establishment capacity where there is the likelihood of transmitting the disease to other persons. In other words, if you have a respiratory infection and you work in a food service establishment, you may not work in a position where you might transmit the disease or the infection to customers or an infected wound, the same situation. May I point out that such

infections are rarely fatal, whereas far as we know, AIDS always is. Finally, Mr. President, I want to address what seemed to me to be the three primary arguments raised against testing. Argument number one, which Senator McLane raised, testing is too expensive. Some witnesses said the cost would be in the hundreds of dollars per person testing. That is simply false, Mr. President. I would ask our pages to distribute to our members a document just received from the Walter Reed Army Institute of Research in Washington, D.C. I don't think that I have to tell my colleagues that the Department of Defense is not known for cost-efficiency, but let me tell you that the Department of Defense tests every military member of the armed services at least every two years. If the first such test is positive, the test is repeated. If the second test is positive, a more definitive test is conducted. These test are conducted in civilian laboratories under contract to the government. The total cost, Senator McLane, for all three tests is less then \$3 per person, not hundreds of dollars, less than \$3 per person. I invite my colleagues to examine this document form Walter Reed Army Institute of Research which substantiates these figures. Furthermore, the cost of testing would be borne not by the taxpayers, but by the health care worker and/or his employer. So much for the cost, three dollars. Double it, triple it, say it is \$9, it is still not hundreds of dollars, is it, Senator McLane? Argument number two. So far there have been few documented cases of patients being infected by health care workers. Fair enough, but who can doubt that as the AIDS epidemic spreads further through our society, the number of such patients infected by health care workers will rise proportionality. Let me point out that there are few cases of polio in our nation in this day and age, thank god, yet no one suggests that because there are so few that it isn't worth immunizing our children against polio. Polio is not always a deadly disease. It is a devastating disease, but it isn't always a deadly fatal disease, but AIDS always is, always. To use the excuse that there are rather few cases and because there are rather few we shouldn't test, is like saying there aren't very many cases of polio, don't bother immunizing your children. Argument number three. Testing is an invasion of privacy of health care workers. I would like to suggest when the health of their patients is involved there is no such thing as privacy for health care workers. But let me go beyond that by asking this question. Is it an invasion of privacy for example, to require airline pilots to undergo rigorous physicals every six months, not just a test for AIDS, but a test for almost everything under the sun? Is that an invasion of privacy? I suggest not. Would any member of this body stand up and say I think testing airline pilots every six months for physical fitness is an invasion of privacy and ought to be stopped? Of course not, no one would do that for obvious reasons.

Does anyone argue against their removal from flight status and the payroll when airline pilots fail their physical exam? I don't think that anyone would make that argument. Under this bill we are not removing doctors or health care workers infected with AIDS from the practice of medicine, we are simply saying that they have to report it and that the Division of Health prescribes which procedures they may not preform. Does anyone argue against physicals for airline pilots every six months that cost, I assure you, far more than three or six or nine dollars because they are too expensive? I think people see the benefit of such physicals, it is called prevention. These are preventative measures. In one case preventing public safety and in the case of AIDS, protecting public health. Let me just say this friends, there are at least 1,000 infected persons in this state infected with AIDS, probably a good many more. These people pass through a crossroads that all of us, infected or un-infected pass every year, the offices of health care workers. It is the only crossroads through which all of us almost inevitably pass, those of us infected and those of us, thank god, that aren't infected. For most of our citizens, that is those un-infected by AIDS and who do not engage in high risk behavior. Passage through this crossroads can bring them as close to the AIDS virus as they will ever come. You know how close? The thickness of a surgical glove, that is how close all of us will come and our children, who are after all not really making a decision based on informed consent as we might, that is how close that we are going to come or have come or certainly will come in the coming years. The thickness of a surgical glove. Those gloves are punctured often by needles and by teeth and by other sharp objects such as scalpels. Given the deadliness of AIDS and the microscopic thinness of that barrier, given the widespread epidemic of AIDS whose boundaries that we really don't even know yet, I suggest that it isn't asking too much of our medical community to submit once a biennium for example, or even annually to a simple blood test for AIDS. I suggest that they owe it to themselves, I suggest that they owe it to their patients and to society. The cost in fact is low, and the benefit in protecting the health of innocent persons is so high as to be immeasurable. I suggest to you that this is a reasonable bill. It gives all of the authority to the Division of Public Health as to how often such tests will be performed and who shall have to take the test, what procedures they may perform if they are found to be infected. It is an eminently reasonable bill and I predict that one day circumstances will force us to pass it and we will be ashamed that we didn't do it sooner. I hope that we will do it today.

SENATOR MCLANE: I really don't want to prolong this any longer, but would it surprise you, Senator Humphrey, to know that the House has just defeated a similar bill by 290-35?

SENATOR HUMPHREY: Well, Senator, maybe if they would have heard my speech it would have done better.

Senator Bass moved that SB 312-FN an act relative to mandatory testing for health care providers and certain patients for communicable diseases be laid on the table.

Recess.

Out of recess.

Question is on the motion to have SB 312 laid on the table.

A roll call was requested by Senator Humphrey.

Seconded by Senator Heath.

The following Senators voted yes: Oleson, W. King, Fraser, Hough, Blaisdell, Bass, Pressly, McLane, J. King, Delahunty.

The following Senators voted no: Heath, Currier, Disnard, Roberge, Nelson, Colantuono, Podles, Humphrey, St. Jean, Shaheen, Hollingworth, Cohen.

Yeas 10

Nays 12

The motion to have SB 312 laid on the table fails.

### **SUBSTITUTE MOTION**

Senator Humphrey moved to substitute ought to pass for inexpedient to legislate.

SENATOR HOLLINGWORTH: I would like to ask you to vote against this motion of ought to pass. I think that this is . . . there is not another state . . . Senator Humphrey said to you, that we are going to be ashamed that we have done it, well if it was clear that by doing this we were going to be making a change, then other states would have taken this action. There is not another state that has taken that action. I would like to remind you that if you are going to start with health care providers, what you have to remember is that young lady who was infected was infected from a tool, a dentist tool. Now if we are going to just do health care providers, maybe we need to test everybody. Waitresses, because they handle silverware, bartenders, they handle glasses. Maybe everybody that handles any product should be tested. I think that this is a serious thing that we need to think about. Maybe we need to test coaches, we need to test grocery store clerks, everybody, no matter what you do. Matter of fact, maybe each one of us needs to be tested. If that is what we



think is going to prevent the spread of AIDS. It is not. What is going to prevent the spread of AIDS is to find out what we can do and what is happening. This is not the instrument to do it, this is not the answer. The very idea that because it is one nylon glove is far more than what the rest of us have when we pick up a cup of coffee in a restaurant. I mean that waitress that brought it to the table could very well have AIDS. Are we going to become so paranoid that that is what we intend to have happen in this country? I mean this is bad, we have a serious problem, but that is not the answer. It is just not the answer.

SENATOR NELSON: Senator McLane, I know that you were at the testimony, I mean the hearing where the testimony was. As Senator Pressly reminded me, you know of course that we had a major case down in Nashua. Not major in the sense that it was in all the newspapers and a big discussion. Here is the question, Senator McLane. Having listened to all of the testimony and studying the bill, would you say that the medical community is taking the necessary steps to implement and to make sure that procedures and universal precautions are applied? Maybe just give us a handle on what kind of responsibility the medical community is assuming in this so that we don't have to support this kind of government inquisition?

SENATOR MCLANE: Yes. I would say that that was SB 410 that we passed on Tuesday. That was an excellent bill. That was a bill that was the alternative to mandatory testing. That was the bill that was requested by the division and had long been studied by Senator Fraser and others. That was the bill that called for mandatory universal precautions and called for the reporting of any health care worker that was tested for the AIDS. That was the sensible bill. I am sorry to call this bill a stupid bill, but I feel that the cost and the problems associated with it are not proportionate to what is needed at this time.

SENATOR NELSON: Senator McLane, do I understand you to say that with those remarks that the medical community is going to, and is assuming responsibility for making sure that they police themselves so that the public can rest easy? I mean that has to be the thrust of this?

SENATOR MCLANE: It is and it is so that they can rest easy and the public can rest easy. The dangers of not using universal precautions are what we were looking at in 410.

SENATOR HEATH: Senator Hollingworth, if you believed that this legislation might save one single life of a New Hampshire citizen over the next 10 years, would you support it?

SENATOR HOLLINGWORTH: I think the record clearly indicates this is not the way to do it. That all the statistics say that there are few cases in the nation and that prevention is the way to go and that the health care worker is far more at risk than the person who is being treated as a patient.

SENATOR HEATH: What I am trying to get from your comment, Senator, is that I haven't heard a reason why we shouldn't do it, I just heard why you didn't think that it was necessary. What is the down side of doing it if it might save a life, if it might save a dozen lives?

SENATOR HOLLINGWORTH: Because I don't think that that is what would save lives.

SENATOR HUMPHREY: Senator Hollingworth, you mentioned that perhaps we ought to be testing waiters and bartenders, so I want to ask, have you ever had a cavity filled by a waiter or have you ever had blood drawn for example, by a bartender?

SENATOR HOLLINGWORTH: No I haven't. But, Senator Humphrey, if you have read the report on that young lady that had been infected, she was infected because of the tools that the dentist used were carrying the virus and not necessarily that he had any open cuts.

SENATOR HUMPHREY: Senator McLane, you have strong faith in the bill which was passed earlier this week. Does that bill require mandatory testing of health care workers?

SENATOR MCLANE: Of course it doesn't.

SENATOR HUMPHREY: Then how can you have so much faith in the efficacy of that bill if persons, health care workers who carry the virus may not even be aware of it themselves much less their patients are aware of it?

SENATOR MCLANE: I guess in answering that question, I would speak again to my faith in the legislative process and the hearing, and the fact that no one for whom I have great respect was for the mandatory testing and that those that I do have great respect for, the division, the professionals and those others, made it very clear that mandatory testing is not the way to go and does not accomplish what we would all hope, which is that education and the universal precautions and those sensible matters having to do with AIDS have been called for by the profession and have been passed in the former bill.

Senator Currier moved the question.

Adopted.

Question is on the substitute motion of ought to pass.

A roll call was requested by Senator Humphrey.

Seconded by Senator Heath.

The following Senators voted yes: Heath, Disnard, Roberge, Bass, Colantuono, Humphrey, St. Jean, Delahunty.

The following Senators voted no: Oleson, W. King, Fraser, Hough, Currier, Blaisdell, Pressly, Nelson, McLane, Podles, J. King, Shaheen, Hollingworth, Cohen.

Yeas 8

Nays 14

The substitute motion of ought to pass failed.

Senator McLane moved the committee report of inexpedient to legislate.

SB 312-FN is inexpedient to legislate.

**SB 336**, an act providing an exemption for the issuance of securities by certain established investment companies. Banks committee. Ought to pass with Amendment. Senator Fraser for the committee.

**4881L**

### **Amendment to SB 336**

Amend the bill by replacing all after the enacting clause with the following:

1 New Subparagraph; Exemptions for Certain Established Investment Companies. Amend RSA 421-B:17, I by inserting after subparagraph (m) the following new subparagraph:

(n) Any security issued by an issuer registered as an open-end management investment company or unit investment trust under Section 8 of the Investment Company Act of 1940 if:

(1) The issuer is advised by an investment adviser that is a depository institution exempt from registration under the Investment Company Act of 1940 or that is currently registered as an investment adviser; and has been registered, or is affiliated with an adviser that has been registered, as an investment adviser under the Investment Advisers Act of 1940 for at least 5 years next preceding an offer or sale of a security claimed to be exempt under this paragraph, and:

(i) The adviser has acted, or is affiliated with an investment adviser that has acted, as investment adviser to one or more registered investment companies or unit investment trusts for at least 5 years next preceding an offer or sale of a security claimed to be exempt under this paragraph; or

(ii) The issuer has a sponsor that has at all time throughout the 5 years before an offer or sale of a security claimed to be exempt under this paragraph sponsored one or more registered investment companies or unit investment trusts, the aggregate total assets of which have exceeded \$100,000,000; and

(2) The secretary of state has received prior to any sale exempted herein:

(i) A notice of intention to sell or offer to sell which has been executed by the issuer which sets forth the name and address of the issuer and the title of the securities to be offered in this state; and

(ii) One copy of the prospectus and statement of additional information, if any; and

(iii) A filing fee pursuant to RSA 421-B:31, a separate notice and fee shall be required for each individual series or class of fund.

(3) In the event any offer or sale of a security of an open-end management company is to be made more than 12 months after the date on which the notice to claim the exemption was filed under this subparagraph, another notice and payment of the applicable fee shall be required for each individual series or class of the fund. For the purpose of this subparagraph, an investment adviser is affiliated with another investment adviser if it controls, is controlled by, or is under common control with the other investment adviser.

2 New Subparagraph; Fee Established. Amend RSA 421-B:31, I by inserting after subparagraph (g) the following new subparagraph:

(h) Fee for notice pursuant to RSA 421-B:17, I(n) \$1,000.

3 Effective Date. This act shall take effect July 1, 1992.

SENATOR FRASER: Mr. President, SB 336 as amended will provide an exemption from state security registration requirements for mutual funds issued by investment companies which currently are subject to regulation by the United States Security and Exchange Commission and which should establish the promised record in the mutual fund industry. SB 336 has been unanimously endorsed by the Senate Banks committee and industry representatives and the state regulators. The amendment printed in today's calendar represents a consensus reached by industry representatives and by state regulatory authorities. Briefly, Mr. President, SB 336 will eliminate the overburden of some registration requirements without diminishing in any respect, the authority of state regulators to enforce our security laws. SB 336 represents the 14 such exemption from state security registration requirements. The exemption will apply only to investment companies which have demonstrated a performance record and which have been closely scrutinized by the Security and

Exchange Commission. I urge your support for 336 to streamline securities regulations so that the regulators in New Hampshire may focus their limited resources on the enforcement of our security laws and regulations. Thank you, Mr. President.

Committee amendment adopted.

Referred to Economic Development committee (Rule #24).

**SB 340-FN**, an act clarifying the definition of a school district. Education Department committee. Ought to Pass with Amendment. Senator Disnard for the committee.

**4931L**

### **Amendment to SB 340-FN**

Amend the bill by replacing all after the enacting clause with the following:

1 Definition of School District Clarified. Amend RSA 194:1 to read as follows:

194:1 What Constitutes a District. Each town shall constitute a single district for school purposes; provided[,] that districts organized under special acts of the legislature may retain their present organization, and the word "town", wherever used in the statutes in connection with the government, administration, support or improvement of the public schools, shall mean district. **Notwithstanding any other provision of law to the contrary, in the case of unincorporated towns or unorganized places in Coos county, Coos county shall constitute the district.**

2 Effective Date. This act shall take effect 60 days after its passage.

### **AMENDED ANALYSIS**

This bill expands the definition of a school district by providing that, in the case of unincorporated or unorganized places in Coos county, Coos county shall constitute the school district.

SENATOR DISNARD: The committee had a unanimous vote of ought to pass on SB 340. I think one of the Senators that spoke in favor of this at the hearing indicated and I quote "what this bill does is essentially make the county commissioners the school board." We passed legislation, I think, last session that the county commissioners would be the selectmen of the unincorporated townships. The unincorporated townships people do not have an opportunity to discuss their concerns with education such as in Pinkham Notch. All this bill does is make the Coos county the school board for the unincorporated towns in that area and that county similar to what the towns received last year.

Committee amendment adopted.

Ordered to third reading.

**SB 371**, an act establishing a committee to study the feasibility of year round schools. Education Department Committee. Ought to Pass with Amendment. Senator J. King for the committee.

**4935L**

**Amendment to SB 371**

Amend the bill by replacing section 1 with the following:

1 Committee on Year Round Schools Established. There is hereby established a committee to study the feasibility of year round education. The committee shall consist of the following members:

I. Two senators, one of whom shall be the chairperson of the education committee, appointed by the president of the senate.

II. Two house members, one of whom shall be the chairperson of the education committee, appointed by the speaker of the house.

III. The governor or his designee.

IV. The commissioner of education or his designee.

V. One person from the New Hampshire School Boards Association, appointed by that association.

VI. One person from the New Hampshire School Administrators Association, appointed by that association.

VII. One person from the New Hampshire Association of School Principals, appointed by that association.

VIII. One person from the National Education Association, New Hampshire, appointed by that association.

IX. One person from the state board of education, appointed by that board.

X. One parent, appointed by the governor.

XI. One primary teacher, appointed by the commissioner of education.

XII. One secondary teacher, appointed by the commissioner of education.

XIII. The director of the New England Information Center on Year Round Schools at Plymouth State College.

**SENATOR J. KING:** This is a topic that is quite discussed today. It is something that should have been looked at probably a long time ago. This bill establishes a committee to study the feasibility of year round schools. The committee recommends ought to pass. Thank you.

Committee amendment adopted.

Ordered to third reading.

**SB 383**, an act requiring that information be compiled regarding persons convicted of child abuse. Education Department committee. Ought to Pass with Amendment. Senator J. King for the committee.

**4933L**

**Amendment to SB 383**

Amend the title of the bill by replacing it with the following:

**AN ACT**

establishing a committee to recommend to the state board of  
education different methods of obtaining information  
on persons convicted of any felony  
involving child abuse.

Amend the bill by replacing all after the enacting clause with the following:

1 Committee on Convicted Child Abusers Established. There is hereby established a committee to recommend to the state board of education different methods for obtaining information on convicted child abusers. The committee shall consist of the following members:

I. Two house members, one appointed by the speaker of the house and one appointed by the chairman of the education committee.

II. Two senators, one appointed by the senate president and one appointed by the chairman of the education committee.

III. The commissioner of education.

IV. One superintendent, appointed by the New Hampshire School Administrators Association.

V. One elementary principal, appointed by the New Hampshire Association of School Principals.

VI. One elementary teacher, appointed by the New Hampshire Federation of Teachers.

VII. One attorney, appointed by the attorney general.

2 Meetings; Compensation. The committee shall choose a chairperson from among its members. Members of the committee shall serve without compensation, except that legislative members shall receive mileage at the legislative rate when attending to the duties of the committee. The department of education shall provide administrative services as requested by the committee. The first-appointed senate member shall call the first meeting prior to July 1, 1992.

3 Report. The committee shall make a report evaluating various methods which the state board of education could use to acquire information on convicted child abusers. After the method for obtaining this information is established, the state board of education shall

compile a list containing the names and addresses of all persons in this state who have been convicted of any felony involving child pornography, or of a felonious physical assault on a minor, or any sexual assault. The list shall be available to certain educators through the state board of education. The list shall be available to educators only for the purposes of investigating the history of a particular present or prospective employee. Any information revealed under this section shall be disclosed only to those persons responsible for personnel management at the educational institution. The committee shall submit its report including recommendations for legislation, to the governor, the senate president, and the speaker of the house on or before November 1, 1992.

4 Effective Date. This act shall take effect 60 days after its passage.

### AMENDED ANALYSIS

This bill establishes a committee to recommend to the state board of education, different methods for obtaining information on convicted child abusers.

A list of convicted child abusers compiled by the state board of education would be available to educators only for the purposes of investigating the history of a particular present or prospective employee.

The committee is required to submit a report to the governor, the president of the senate and the speaker of the house on or before November 1, 1992.

SENATOR J. KING: SB 383, the purpose of the bill was to provide a way for the state board of Education to get the records of those convicted of child abuse in any way, shape or manner. The committee was quite concerned about it and there was quite a bit of discussion. Some questions came up that couldn't be answered and we checked with the Senate attorney, Mr. Paul Alfano who said that the current statute does not allow this to happen without the consent of the person; therefor, they still have interest in the project and they recommended that it go to a study committee.

Committee amendment adopted.

Ordered to third reading.

**SB 397**, an act relative to long-term job supports for severely disabled persons. Education Department committee. Ought to Pass. Senator Disnard for the committee.

SENATOR DISNARD: SB 397, the Education committee voted unanimously to approve this. It is another one of those situations where the U.S. Congress has added a stipulation that severe disabili-



ties people, the state must have a provision in the state that provides them assistance. Essentially, what this assistance is, twice a year, once a disabled person or severely disabled person has a position, a job after education, twice a year, there must be some follow-up to provide certain services to make sure that these people are able to handle the job and able to do what is necessary.

SENATOR NELSON: Senator Disnard, is this going to cost money and from whence will the funding come?

SENATOR DISNARD: The bill, as you notice, was to transfer to the location of rehabilitation any state general funds that are involved. If money is not available and in the event that the vocational rehabilitation program does not have money, they will not be asking for it this year. It is just, I would like to read a letter from Senator Blaisdell who was the sponsor of this, if I may? "Although there is no funding for this program, the Division of Vocational Rehabilitation would like to both clarify the program and have in place legislation which would establish eligibility for those services to meet the federal mandate itself." No, no funding.

Adopted.

Ordered to third reading.

**SB 411-FN**, an act relative to special education catastrophic aid. Education Department committee. Ought to Pass with Amendment. Senator Disnard for the committee.

**4936L**

### **Amendment to SB 411-FN**

Amend the bill by replacing all after the enacting clause with the following:

1 Estimated Expenditures; Excess Funds for Certain Court Ordered Placements. Amend RSA 186-C:18, III to read as follows:

III. The state shall appropriate not less than \$1,000,000 for each fiscal year to assist school districts in meeting catastrophic cost increases in their special education programs. The state board of education through the commissioner, department of education, shall distribute aid available under this paragraph as entitlement to such school districts as have a special education pupil for whose costs they are responsible, for whom the costs of special education in the fiscal year exceed 3-1/2 times the **estimated** state average expenditure per pupil for the school year preceding the year of distribution. If in any year, the amount appropriated for distribution as catastrophic special education aid in accordance with this section is insufficient therefor, the appropriation shall be prorated

proportionally based on entitlement among the districts entitled to a grant; provided that the amount of catastrophic special education aid per pupil for a district requiring such aid shall not be more than 80 percent of catastrophic costs exceeding 3-1/2 times the **estimated** state expenditure per pupil for the school year preceding the year of distribution for that district. If there are unexpended funds appropriated under this paragraph at the end of any fiscal year, such funds shall be distributed [according to the equalizing formula established in paragraph II] **for court-ordered placements under RSA 186-C:19-b.** The state may designate up to \$250,000 of the funds which are appropriated as required by this paragraph, for each fiscal year, to assist those school districts which, under guidelines established by rules of the state board of education, may qualify for emergency assistance for special education costs. Upon application to the commissioner of education, and approval by the commissioner, such funds may be accepted and expended by school districts in accordance with this chapter; provided, however, that if a school district has received emergency assistance funds for certain educationally disabled children, it shall not receive catastrophic special education aid for those same educationally disabled children. If any of the funds designated for emergency assistance under this paragraph are not used for such emergency assistance purposes, the funds shall be [used to assist school districts in meeting catastrophic cost increases in their special education programs as provided by this paragraph] **distributed for court-ordered placements under RSA 186-C:19-b.**

2 Effective Date. This act shall take upon its passage. Education Department committee.

SENATOR DISNARD: The committee has voted unanimously. I hope that you will understand presently a high expense, a catastrophic aid child in education. Before a school district can be reimbursed, the school year must end and the Department of Education has to figure out the average cost and how they can distribute the funds that second year. In other words, for 1990, the school districts now receive those funds to 1991. Presently, school districts, in some instances, are late in submitting their forms and there is nothing the state department can do. In the past several years some school districts have had to wait not only the next year, the first year, but almost to the end of the second school year before they can be reimbursed. What this bill does is give permission for the state Department of Education to estimate the average cost per pupil in the state. It is my understanding from testimony from the Department of Education, particularly the Commissioner of Education, the estimate of the last five years by the department and the actual cost hasn't varied more than \$33 because it is the average of the state. So

that they can pay the catastrophic cost to these communities in a more timely manner so that they don't have to borrow money.

SENATOR NELSON: On page two of the bill, I just want a little more clarification. Who presently is paying for the court ordered placement?

SENATOR DISNARD: Senator Nelson brought up something that I neglected. Thank you. If there is any surplus left over from this money, from this catastrophic aid fund, it would not go to foundation aid, but would go to court ordered placements to lower the cost to the community; however, I hope that you understand that there hasn't been any surplus money in the last five years, they are just looking forward right now, the counties and the state.

SENATOR NELSON: I just want a clarification. I am sorry, Senator Disnard, I didn't hear the answer and you may have said it. Who presently pays for the court ordered placements?

SENATOR DISNARD: I forget the senate bill of a couple of years ago. I think it was senate bill one. The county took over the expense and the state took over another expense. The counties and the state. I think that it is 75-2, I am not sure.

SENATOR NELSON: Senator Disnard, let me be sure that I understand this in that we have had so many problems with the foundation aid in the two larger cities in the state are not receiving much money. If there is a surplus of the meager six percent, we give to the cities and towns to the foundation aid, if there is a surplus, I don't know where the surplus is. I don't quite understand if there is a surplus.

SENATOR DISNARD: If there is a surplus, rather than be given to the foundation aid, the money then would go to help offset the cost, the expenses, of the court ordered placements which the counties and the cities are responsible for in a percentage anyway.

SENATOR NELSON: But I don't understand where these unexpended funds are. I mean I don't understand what's the surplus from?

SENATOR DISNARD: Well we will say that \$10,000,000, and I am just picking that figure out of the air, is appropriated by the legislature to pay the cost under the formula, 3-1/2 percent, 80 percent. The state, we fund that. If there is any money left over in that \$10,000,000, then that money would go to offset the cost of the court order placements rather than use any of that surplus money left over to go to foundation aid. There hasn't been any money left over.

SENATOR DUPONT: Senator Nelson, are you all set?

SENATOR NELSON: No, I am not, but I know that we have a lot of work to do today.

SENATOR DUPONT: The surplus would be in the catastrophic aid fund, rather than, if I am not mistaken.

SENATOR DISNARD: I am sorry, I didn't explain it clearer.

SENATOR NELSON: The catastrophic aid fund surplus?

SENATOR DISNARD: No. Thank you very much, Mr. President. It would go for the court ordered placements of the heavy catastrophic aid fund.

SENATOR NELSON: In the past have we had a foundation aid formula?

SENATOR DISNARD: The equalized formulation here refers to the present method of which a school district receives catastrophic aid. For example, Nashua has \$100,000 case. I would like to explain it. Presently, the first 3-1/2 percent of the average cost is the responsibility of Nashua and that is about \$10,000. The next \$90,000 is left over and the state presently pays 80 percent. This doesn't change.

SENATOR NELSON: Thank you, Mr. President, for the opportunity to clarify foundation aid and the catastrophic aid formula fund.

SENATOR DUPONT: You're welcome, Senator Nelson.

Committee amendment adopted.

Referred to Finance (Rule #24).

**SB 419-FN**, an act relative to a parental choice in education program. Education Department committee. Inexpedient to Legislate. Senator Disnard for the committee.

SENATOR DISNARD: The Education members in attendance voted inexpedient to legislate.

SENATOR HEATH: Senator Disnard could you tell me what time this bill was execed and where?

SENATOR DISNARD: Yes, sir. Last week I spoke on the Senate floor and I called the attention to the Education committee about this and I said if only one showed up that we would vote. Each member of the Education committee received a notice from the secretary. Also, I spoke to you afterwards and we waited five to ten minutes and asked why you didn't show up and you said that you had another meeting to appear for.

SENATOR HEATH: Senator Disnard, I asked you if you would tell me what time and where this took place, what date and what hour?

SENATOR DISNARD: It took place at 10:05 or 10:10. Oh, wait it was 10:30 on Tuesday.

SENATOR HEATH: Senator, do you know of any other event that was scheduled at that time?

SENATOR DISNARD: Do I know of any other event that was scheduled for that time? No, sir. I just remember what you told me afterwards. I just know you, I don't know all the calendar. I could go to a calendar if you want a recess and I can look it up. I am just trying to say, Senator, that I believe, and the other members of the committee believe, that all of the members received adequate notice.

SENATOR HEATH: Senator, I had thought that there was courtesy among the Senators here, and I thought that you were quite aware of what some republican Senators were doing at that particular time. Would you care to respond to that?

SENATOR DISNARD: Yeah. You say on Tuesday?

SENATOR HEATH: Yes.

SENATOR DISNARD: No, I don't know what republican Senators were doing Tuesday. Yesterday I have an idea what they were doing, but I don't know about Tuesday.

SENATOR HEATH: Thank you.

SENATOR DISNARD: I really don't. If you want to table . . . If the members of the committee who received adequate notice and were warned on the Senate floor are uncomfortable with the committee vote, I have no problem with tabling or recommitting this and having a vote. I am not trying to put the business to anybody. I would like to say that the prime sponsor for five weeks hasn't brought in the amendments that were stated and so I felt that as the Chairman, that there was no interest from the prime sponsor.

Senator J. King moved that we have SB 419-FN an act relative to a parental choice in education program laid on the table.

SENATOR HUMPHREY: Mr. President?

SENATOR DUPONT: It is non-debatable, Senator Humphrey.

The question is on the motion to have SB 419 laid on the table.

SENATOR HUMPHREY: Is it not appropriate to allow for the prime sponsor to make some remarks before a tabling motion is offered?

SENATOR DUPONT: Senator, the question before you is the motion to table and it is non-debatable. It is not up to the Chair to determine what the protocol is at this point in time.

The motion before you is the tabling motion of SB 419-FN as offered by Senator John King.

Adopted.

### LAID ON THE TABLE

SB 419-FN an act relative to a parental choice in education program is laid on the table.

**SB 434-FN-LOCAL**, an act relative to an education program. Education Department committee. Inexpedient to Legislate. Senator Disnard for the committee.

Senator Humphrey moved that we have SB 434-FN-L an act relative to an education program laid on the table.

Adopted.

### LAID ON THE TABLE

SB 434-FN-L an act relative to an education program is laid on the table.

**SB 332**, an act authorizing a municipality to issue bonds to pay the costs of the cleanup of superfund hazardous waste sites. Environment committee. Ought to Pass. Senator W. King for the committee.

Senator Humphrey moved that we have SB 332 an act authorizing a municipality to issue bonds to pay the costs of the cleanup of superfund hazardous waste sites laid on the table.

Recess.

Out of recess.

SENATOR HUMPHREY: Mr. President, I move that . . . Is a motion to recess to a time certain debatable?

SENATOR DUPONT: It is debatable to the time certain.

SENATOR HUMPHREY: And is it superior to a tabling motion?

SENATOR DUPONT: It is not.

SENATOR HUMPHREY: Is a motion to adjourn?

SENATOR DUPONT: The motion to adjourn is the motion of highest priority.

SENATOR HUMPHREY: Mr. President, I move to adjourn the Senate.

SENATOR DUPONT: The motion before you is to adjourn.

SENATOR HUMPHREY: Mr. President, I would like to suggest that if we have reached the point where a Senator has offered a bill in good faith, a bill which he believes to be supported by a substan-

tial number of citizens and when that bill comes to the floor, the Senator, the prime author and sponsor, is denied an opportunity even to utter one word in support of that bill before another Senator tables it and cuts off the prime sponsor from uttering even one word, then there is something wrong with the mood of this body and that we ought to adjourn. Now don't do this ladies and gentlemen. This is not right. I don't know what the motivation was, maybe there was just a misunderstanding, but it is wrong. I would never do that to anyone, not to Senator McLane, not to anyone sponsoring the most pernicious bill I can think of. I would never prevent that person from speaking. That is what happened to me. I don't like it. It is wrong and I think that it is a miserable, stinking precedent and I hope that we don't let it stand.

Recess.

Senator Delahunty in the Chair.

SENATOR J. KING: I will tell you why I made the motion to table that bill. The insinuations were that there was a secret meeting held to discuss this bill . . .

SENATOR HUMPHREY: I didn't have part in that . . .

SENATOR J. KING: Listen, I am talking! A secret meeting held, what time it was, what was going on in a certain place. It was my idea to table the bill. I talked to the Chairman after, and I said "now let us call a meeting where all five members can be there and we will discuss your bill." That is why I tabled this bill and for no other reason whatsoever!

SENATOR DUPONT: I obviously am on the floor to try to bring some reason to this process. As I indicated a little bit earlier, that I as Senate President, recognized a Senator to table this piece of legislation. It was my understanding based on the conversation that went on between Senator Heath and Senator Disnard that there was some question on the basis of whether or not Senator Heath had been given the opportunity to participate in that executive session and the bill was tabled for that purpose. This Senate today has had, I think, an adequate time to act on every piece of legislation that has come before it and there is no reason for us to adjourn at this point. I don't think that there was any malice at any time by the person that made the motion to table other than to give the people who have an interest in this bill the opportunity to discuss it further as to what happened to place this bill on the table or why the recommendation came out of the committee. All I request from this body is the opportunity to get our work done in an orderly fashion which we have always seemed to be able to do in the past. But you have to under-

stand that when you're sitting up there, I don't decide what the motions are, they come from this floor and mealy attempts to table every bill that comes along because of what one person considers an inappropriate action by another member is totally out of order. It is nothing that I have ever been subjected to in this body before in all of the years that I have been here, and that is what does a real disjustice to this body. So I merely ask that we be allowed to continue our work, Senator.

SENATOR HUMPHREY: If it is the desire of Senator King and others to give the members of the Education committee a chance to reconsider the motion of inexpedient to legislate, to reconsider that within the committee, is it not then the procedure to recommit it to committee? How can members consider it in committee if it is on the table on the floor? Does it not have to be recommitted to committee to accomplish what Senator King seeks to do?

SENATOR DELAHUNTY (In the Chair): The answer to your question, Senator, is yes.

SENATOR HUMPHREY: I would ask . . . let me say this, I apologize for losing my temper. I did so because I didn't fully understand. In fact, I didn't understand at all the motivation of Senator King. He was trying to answer Senator Heaths' feelings and I didn't understand that, and I apologize to everyone, especially to Senator King. But it does seem to me that if we want to do what Senator King fairly wants to do then we have done the wrong thing by tabling it, we should instead withdraw this tabling motion and offer a motion to recommit to the committee.

SENATOR DELAHUNTY (In the Chair): First of all, Senator, the motion before us is to adjourn.

SENATOR HUMPHREY: Yes.

SENATOR DELAHUNTY (In the Chair): I haven't heard that motion seconded. Oh, it doesn't need to be seconded. Do you care to withdraw your motion, Senator?

SENATOR HUMPHREY: Well, I would like to have an understanding that we are going to send my bill back to committee and not put it on the table, because that is a totally different thing and it takes how many votes to get it off?

SENATOR DELAHUNTY (In the Chair): Majority.

SENATOR HUMPHREY: Well nonetheless, let us send it back to committee. That is what Senator King sought to do.

SENATOR DELAHUNTY (In the Chair): Senator, your motion to adjourn . . .



SENATOR HUMPHREY: I am going to assume that that is what we are going to do in good faith and I withdraw my motion to adjourn.

SENATOR DELAHUNTY (In the Chair): Thank you, Senator. The motion to adjourn has been withdrawn.

SENATOR HEATH: Is the state of the parliamentary question a motion to table now that the motion to adjourn has been withdrawn? I am assuming that it is.

SENATOR DELAHUNTY (In the Chair): We would be moving on to SB 332 and the question is to lay on the table.

SENATOR HEATH: The question as I understand it, and I want to clarify this before further parliamentary inquiry. Where we are now is that SB 332 has a motion to table by Senator Humphrey.

SENATOR DELAHUNTY (In the Chair): Yes.

SENATOR HEATH: My parliamentary question then is, if Senator Humphrey withdrew his motion to table 332, is there a parliamentary way that we could set aside SB 332 now, for the time being, revisit these two bills and then procede back through the calendar a pace? Is there a way we can do that?

SENATOR DELAHUNTY (In the Chair): Senator, we would have to take each motion in order to do that. It is my understanding that Senator Humphrey can withdraw his motion to lay on the table SB 332 and follow the same process on the proceeding bills if the body so wishes.

SENATOR HEATH: I guess what I need to know is if Senator Humphrey withdrew his motion to table 332 could we, is there a parliamentary way to move back to the two bills that we just discussed and get those done with and then move back through the calendar?

SENATOR DELAHUNTY (In the Chair): The motion then, Senator, would be to take them off of the table and to take each bill, I believe, one at a time.

SENATOR HEATH: Would you accept such a motion even though we are on 332 and in the second reading. Would you accept such a motion for those two education bills, 419 and 434 in order?

SENATOR DELAHUNTY (In the Chair): Before the vote on 332?

SENATOR HEATH: Yes.

SENATOR DELAHUNTY (In the Chair): No, Senator. We have to deal with 332 first.

SENATOR HEATH: Subsequent to completing 332 would you accept such a motion?

SENATOR DELAHUNTY (In the Chair): After we deal with SB 332.

SENATOR HEATH: Thank you.

SENATOR HUMPHREY: I will withdraw my tabling . . . before I answer your question, Senator King, I need to make another parliamentary inquiry. Was in fact 419 tabled? Is it possible for the committee on Education, not to consider that bill in committee while it lies upon the table in the Senate?

SENATOR DELAHUNTY (In the Chair): No.

SENATOR HUMPHREY: No. Therefore Senator Kings desire is defeated by virtue of the bill lying on the table.

SENATOR DELAHUNTY (In the Chair): You can remove it from the table, Senator, and then it can be recommitted. That is the way to handle it if you would like to deal with it.

SENATOR HUMPHREY: I withdraw everything I did and said.

Recess.

Out of recess.

### **MOTION TO RECOMMIT**

Senator W. King moved that we recommit SB 332 an act authorizing a municipality to issue bonds to pay the costs of the cleanup of superfund hazardous waste sites to the Environment committee.

Adopted.

SB 332 is recommitted to the Environment committee.

### **TAKEN OFF THE TABLE**

Senator Heath moved that we have SB 419-FN an act relative to a parental choice in education program taken off the table.

Adopted.

### **MOTION TO RECOMMIT**

Senator J. King moved that we recommit SB 419-FN an act relative to a parental choice in education program to the Education committee.

SENATOR DISNARD: How may I, as the Chairman of the Education committee which has attempted with three notices to have executive session and announced it on the floor the last time and request the Vice Chairman of the Education committee to establish the time for the next hearing on SB 411 and 419?

SENATOR DELAHUNTY (In the Chair): What was the inquiry, Senator?

SENATOR DISNARD: The inquiry is to the parliamentary procedure, since we only have two more session days before the crossover to request and have the minutes of this session, so note, that the Chairman of the Senate Education committee would request the Vice Chairman of the Senate Education committee to establish the times of hearings for the recommitted bill 419 and 411 as recommitted?

SENATOR HEATH: I'm somewhat lost. I made a motion to remove 419 from the table.

SENATOR DELAHUNTY (In the Chair): SB 419 has been removed from the table.

SENATOR HEATH: That was my understanding. And then there was a motion made to remove and recommit. Now, I have never heard those combined before and I want to know what the parliamentary situation is?

SENATOR DELAHUNTY (In the Chair): The motion for removal was approved. The following motion was to recommit SB 419 to committee. There was a parliamentary inquiry from Senator Disnard . . .

SENATOR HEATH: Is the motion to recommit before us now?

SENATOR DELAHUNTY (In the Chair): Yes.

SENATOR HEATH: Okay. Can I speak to that motion?

SENATOR DELAHUNTY (In the Chair): Go ahead, Senator Heath, you may.

SENATOR HEATH: It was my intent in getting it on the floor, not to recommit it to committee, personally. It was my intent to getting it back on the floor to offer Senator Humphrey the opportunity to speak to his bill as I would like to speak to the next bill. So I would hope that before we vote on recommit, Senator Humphrey would have an opportunity to speak to his legislation. That was my intent in trying to unwind this mess that, I in part, unintentionally, helped create and I would add my apologies to this body for any part that I had in it.

The question is on the motion of recommitting of SB 419 to committee.

Adopted.

SB 419-FN is recommitted to the Education committee.

**TAKEN OFF THE TABLE**

Senator Heath moved that we have SB 434-FN-LOCAL an act relative to an education program taken off the table.

Adopted.

**SENATOR HEATH:** I guess I am speaking to the bill because there is no motion on the bill? Do we need a motion on the bill to speak to it?

**SENATOR DELAHUNTY (In the Chair):** We need a motion. The motion is inexpedient to legislate.

**SENATOR HEATH:** I will speak to the motion. This bill came before this body last year in a slightly different form. It was the mildest form of choice that I thought could be drafted. When it failed in this body, Senator Disnard was kind enough to take an interest in it and Senator Disnard worked very hard to find a compromise by working with the Department of Education and some of the other educational interest and coming up with acceptable language and I worked with him in that effort. But as that bill got drafted, I had growing concerns. I still thought, well this is at least a symbol of choice. But when it finally came back from the Department of Education, it was full of the word 'choice'. But when it boiled down, it would affect, if the towns voted that way, maybe 400 or 500 students in the entire state, not a choice bill in any real sense of the word. When I read the night before some statistics on how many people in this nation support choice in education, support change in reform in education and are willing to back it up with dollars. The reason that they are turning down budgets is because they don't see anything happening in education except the steady decline in the status quo, which is a steady decline. So when this bill came to a hearing in the House with perhaps a dozen people there, we didn't need the House to have the hearing. I realized in good conscience that if we are going to do anything in reform we ought to do it not just in name only, we ought to do something that really makes a change. I withdrew my support for the bill, the language of the bill, much to Senator Disnards dismay, because he had put a lot of effort into it. And certainly to the dismay to some of the educationalist who were taking glee at having almost reached the opportunity to saying that we have done choice, now let's move on, when we wouldn't have done anything of the sort. I offered then, and I hope that somebody subsequent to me will make a motion that preserves this bill in this body awaiting for the day, although it won't come, most likely, when the educational institutions, the NEA, the Department of Education, the labor lobbies will support some workable reform. I don't care if it is choice, I

don't care if it is merit pay, I don't care if it is an extended school year, but when they are ready to somehow support some reform in education that will make a difference that just doesn't simply throw more money at a failed system. It is a failing system. It is almost in critical failure as we can see by our trade imbalance and some other things that are affected by the educational product of this country. If you have a short-term kick in the pants way to get the economy going, this isn't it, this is the long-term investment in this nation and in the economy and I would hope that we put that back on the table with the challenge to all of those who are in education to come in with some reform that they can accept that is real reform, instead of one after another of the new ideas that are sweeping this nation in education or reform, putting up a mock camouflage bill that they can say that we have done that and walk away and have the same old situation in the classrooms of the state of New Hampshire. I think the children and the parents of the state of New Hampshire have spoken in polls, and they have spoken individually, and they have spoken in budget meetings, and the vote in education presently is, no confidence. I would hope, probably without avail, that they would hear this challenge and come in and offer some reform and use this title in this bill to do it. Thank you.

Senator Colantuono moved that we have SB 434-FN-LOCAL an act relative to an education program laid on the table.

Motion to table fails.

Question is on the committee report of inexpedient to legislate.

Adopted.

Committee report of inexpedient to legislate is adopted.

SB 313, an act relative to gender balance on boards and commissions. Executive Departments committee. Ought to Pass with Amendment. Senator Pressly for the committee.

4956L

#### Amendment to SB 313

Amend RSA 21:33-a, IV as inserted by section 1 of the bill by replacing it with the following:

**IV. That when an appointment is made and when a vacancy is filled, one of the factors which may be taken into consideration shall be the gender balance in the population which is served or regulated by the state office, agency, commission, or board, so that when the position is filled, it may result in a state office, agency, commission, or board which reflects that gender balance.**

### AMENDED ANALYSIS

This bill provides that when an appointment is made by the governor and council, one of the factors which may be taken into consideration in filling the position shall be the gender balance in the population which is served or regulated by the state agency to which the appointment is made.

**SENATOR PRESSLY:** The amendment is on page seven. With the amendment is a complete replacement. It was an unanimous recommendation from the committee that this bill be ought to pass.

Committee amendment adopted.

Ordered to third reading.

**SB 314-FN-A-LOCAL**, an act making a supplemental appropriation for the board of tax and land appeals and increasing filing fees for appeals to the board. Executive Departments committee. Ought to Pass. Senator Currier for the committee.

**SENATOR CURRIER:** This bill makes a supplemental appropriation for fiscal years 1992 and 1993 to the board of tax and land appeals in order for the board to hire one paralegal and to hire two executive secretaries. The bill also increases the filing fee for taxing appeals before the board from \$40 to \$70. This board happens to be one of the most busiest boards. They have a two and three year backlog on cases. We have taken some legislative action with regard to this situation two or three times in the last couple of sessions. This will basically help them to address the filings of tax appeals so that we can get a better handling of these cases so that people don't have to wait two to three years before their case was heard before that board.

**SENATOR NELSON:** Senator Currier, I would just like to ask you a question about section #5 of the bill on page three, line 13. You want a supplemental appropriation of \$64,000 and the second year \$105,000? Where is this money coming from, Senator?

**SENATOR CURRIER:** This money is coming from the general fund. Actually it is coming from the increase in the filing fee from \$40 to \$70, Senator. The reason that this bill is before us in a separate bill by itself, is that the Board of Land and Tax Appeal missed the deadline in the House to get it in part as the supplemental budget.

**SENATOR NELSON:** Senator Currier, what is the mechanism in here that is going to shift the funds from the fees, because it says that "the Governor shall draw his warrant"? I was curious. I don't

understand how, you are talking about the general fund and you are talking about the filing fees and fines. Is there anything that ties those two together?

SENATOR CURRIER: My understanding is that in the supplemental appropriations bill it does that. That would probably be a better question asked of Senator Hough.

SENATOR NELSON: Senator Hough, I am talking about page three of the bill, line 13. It talks about a supplemental appropriation. It talks about \$64,000 the first year and then \$105,000 the second year, adding new staff. I am trying to figure out how is this funded and where is the fee money going in. I am just trying to get the understanding of this. I will be happy to wait for an answer.

SENATOR HOUGH: The answer I gave you, Mary, is incorrect. I stand corrected. But it is my understanding that all fees go into the general fund, okay? So in effect, the increase in the fees are in the treasury and the appropriation to fund the positions will be offset by the increase of the general fund monies that come into the treasury. It is not self-funding. Okay? You make the tank bigger and we make the fences bigger, but in terms of increased cost to the government or the general funds is revenue neutral as opposed to those agencies where they are self-funding. Is that the question that you were asking? I mean what is your point?

SENATOR NELSON: My point is, my question is that this is a supplemental appropriation from the general fund, this is a supplemental from the 1992 and 1993 general fund. You are raising the fees and fines, you are telling me that it is not self-funding. I am asking you where are we getting this money from, bottom line?

SENATOR HOUGH: This bill appropriates money . . .

SENATOR NELSON: From the general fund.

SENATOR HOUGH: From the general fund. The cost of the general fund is off-set by the increased fees to the general fund.

SENATOR NELSON: Okay. Thank you, Senator. Thank you, Mr. President.

Referred to Finance (Rule #24).

**SB 357-FN**, an act prohibiting licensure by any state agency or board where an outstanding court default or bench warrant has been issued and making license application fees non-refundable. Executive Departments committee. Ought to Pass with Amendment. Senator Colantuono for the committee.

4953L

**Amendment to SB 357-FN**

Amend the bill by replacing all after section 1 with the following:

2 Definition of Board Changed. RSA 332-G:1 is repealed and reenacted to read as follows:

332-G:1 Definitions. As used in this chapter, "board" means any department, division, commission, agency or board under this title which examines and licenses an occupation or profession.

3 Reference Deleted. Amend RSA 332-G:2 to read as follows:

332-G:2 Examination Fees. Boards [or commissions] which administer examinations and which establish charges to examination applicants equivalent to 125 percent of the direct expense of the examination may expend funds for such examinations, related services, or supplies as needed, but not to exceed the direct expense of the examination.

4 New Sections; Licensure Prohibited; Non-Refundable Fees. Amend RSA 332-G by inserting after section 2 the following new sections:

332-G:3 Licensure Prohibited. Before any board issues a license, certificate, registration, permit or approval to any applicant, a board shall determine from the commissioner of safety whether the applicant has an outstanding court default or bench warrant in this state. Upon notification by the commissioner of safety that any applicant has an outstanding court default or bench warrant, the board shall not issue a license, certificate, registration, permit, or approval or renew any license, certificate, registration, permit, or approval.

332-G:4 Non-Refundable Fees. Notwithstanding any other provision of law, all application or renewal fees for licensure, certification, registration, permitting or approval by any board shall be non-refundable.

5 All boards as defined under RSA 332-G:1 shall have 3 years from the effective date of this act to implement a system for the exchange of information required under RSA 332-G:3.

6 Effective Date. This act shall take effect January 1, 1993.

**AMENDED ANALYSIS**

This act requires any licensing board, as defined in RSA 332-G:1, as part of its application review procedure to contact the commissioner of safety to determine if the applicant has an outstanding court default or bench warrant. If a court default or bench warrant exists, the board shall not issue a license or renew a license. The bill also makes all licensure application and renewal fees non-refundable.

SENATOR COLANTUONO: This bill basically makes two reforms. It is trying to make it easier for the state to collect their fines and



penalties and so forth. The first thing that it does is say that any person applying to the state for any type of license or renewal or anything, including driver's license, nursing license, attorney's license, any type of professional license or so forth, cannot get it unless it shows that they don't have any pending defaults or warrants, etc. The other change that it makes is that any time that a person pays a fee to the Commissioner of Safety for a license or registration permit, etc. and they are denied because they are not qualified for it, the Department of Safety is entitled to keep the fee. Right now a lot of money is going back to people after a lot of work is being done, which the applicant should be paying for.

Committee amendment adopted.

Ordered to third reading.

**SB 362**, an act redefining proprietary medicines to include nonprescription medicines and exempting non-pharmacy retail stores and outlets from classification as pharmacies for the purpose of RSA 318. Executive Departments committee. Ought to Pass with Amendment. Senator J. King for the committee.

4945L

#### Amendment to SB 362

Amend the bill by replacing section 2 with the following:

2 Non-Prescription Drug Sale or Possession. Amend RSA 318:42 to read as follows:

V. The sale and distribution of [proprietary medicines] **nonprescription drugs** as defined in RSA 318:1, XVIII by **non-pharmacy retail stores and outlets**. Retail stores and outlets engaging in the sale and distribution of such items shall not be deemed to be improperly engaged in the practice of pharmacy. No rule shall be adopted by the board under this chapter which shall require the sale of nonprescription drugs by a licensed pharmacist or under the supervision of a licensed pharmacist, provided that this section shall not prevent or interfere with the authority of the executive secretary of the board to make a determination that a specific product may only be dispensed upon a written prescription of a practitioner, as set forth in RSA 146:6, XI.

SENATOR J. KING: SB 362 simply clarifies New Hampshire's law that nonprescription drugs may be sold in non-pharmacy outlets such as grocery stores, convenient stores and other convenient outlets. This bill only applies for nonprescription drugs. This would not prohibit the Board of Pharmacy from regulating even these drugs. If the board finds that there is a problem with a certain drug product, the board could remove the nonprescription designation and require

a sale only by a doctors prescription. The bill states in plain terms that a product that food and drug administration has deemed to be safe and not for sale without a physicians intervention and plus the prescription will not be restricted in sale, only from the pharmacy. Given a diverse demographics of New Hampshire, the rural communities that we have, this bill assures that all consumers have these prescriptions and nonprescription drugs at convenient locations. Thank you very much.

Committee amendment adopted.

Ordered to third reading.

**SB 387**, an act authorizing legally constituted boards and commissions which are created for the purpose of state historic site restoration the option of retaining ownership of any historic site furnishings which they acquire with other than state funds. Executive Departments committee. Ought to Pass. Senator Pressly for the committee.

**SENATOR PRESSLY:** SB 387 is recommended ought to pass unanimously by the committee. As the bill states, it is an act authorizing legally constituted boards and commissions, which are created for the purpose of state historic site restoration, the option, strictly option, of retaining ownership of any historic site furnishing which they acquire with other than state funds. It is enabling legislation.

**SENATOR HEATH:** Senator Pressly, can you tell me what this is all about?

**SENATOR PRESSLY:** Yes I can. There are some situations where there is state funding involved in the restoration of historic sites and they have had opportunities where furnishings have been donated and given to them and they have not had the authority to accept them. This does not involve any state money whatsoever. It enables a group to accept as a donation, furnishings that compliment a historic site.

**SENATOR HEATH:** When you say they, what kind of they are we talking about?

**SENATOR PRESSLY:** Specifically, it is to do with the Wentworth Coolidge building that the state is involved with. There have been furnishings that have been offered and they have not had the authority to just accept them. This is strictly enabling, there is no money. It is truly a very innocent, innocuous, enabling bill. Just as it says.

**SENATOR HEATH:** I don't understand why they didn't always have the option. There is no prohibition, is there?

SENATOR PRESSLY: My understanding was that the fact that there were state funds in the project that they needed state permission in order to have a comingling of a state authority accepting private donations. There was a comingling of funds. A state agency and private money, there had to be authority through the legislature for them to do that.

SENATOR HEATH: Thank you.

Adopted.

Ordered to third reading.

Recess.

Senator Dupont in the Chair.

**SB 418**, an act changing the title of juvenile services officers to juvenile probation-parole officers. Executive Departments committee. Ought to Pass with Amendment. Senator Colantuono for the committee.

**4932L**

### **Amendment to SB 418**

Amend the bill by inserting after section 3 the following and renumbering the original section 4 to read as 6:

4 Reference Change. Amend RSA 169-A:9-a to read as follows:

169-A:9-a [Conditional Release] **Juvenile Probation**. An adjudicated juvenile placed on probation or parole as such term is used in the interstate compact on juveniles is on [conditional release] **juvenile probation** as defined in RSA [169-B:2, V] **169-B:2, VIII**.

5 Reference Changes. Amend the following RSA provisions by replacing "conditional release" with "juvenile probation": RSA 169-B:2, V; RSA 169-B:5, III; RSA 169-B:19, I(d); 169-D:2, VI; 169-D:4, III; and 169-D:17, I(a)(2).

### **AMENDED ANALYSIS**

This bill changes the title of juvenile services officers to juvenile probation-parole officers.

This bill also changes certain references to the term "conditional release" to "juvenile probation."

SENATOR COLANTUONO: This bill was basically a request of the persons who presently are juvenile services officers. They, after several years of having that designation, they believe that that designation is confusing to the general public and not helpful to their work. It also has, the initials JSO also has some unpleasant connotations among the general public and they don't want to be known as JSO's.

So the bill was put in to put them back to their prior designation of juvenile probation-parole officers, which much better clarifies to the general public what they are and what they do. Since that change was being made anyway, in order to make it consistent, the Executive Departments committee decided to amend the juvenile statute to take out the term "conditional release" which has been used for the past several years and return to the old term "juvenile probation". Again, for the sake of consistency.

Committee amendment adopted.

Ordered to third reading.

Senator W. King in opposition to SB 418.

**SB 421-FN**, an act relative to fireworks. Executive Departments committee. Ought to Pass with Amendment. Senator Currier for the committee.

**4925L**

### **Amendment to SB 421-FN**

Amend the bill by replacing all after section 5 with the following:

6 New Sections and New Subdivision; Suspension Authority; Advertising; Permissible Fireworks. Amend RSA 160-B by inserting after section 13 the following new sections:

160-B:14 Immediate Suspension Authority. Notwithstanding any other provision of law to the contrary, the commissioner may immediately suspend a license issued pursuant to RSA 160-B:6 if the commissioner has evidence that the licensee is selling fireworks contrary to any of the provisions of RSA 160-B or any rules adopted under this chapter. Any person whose license is suspended pursuant to this section shall be given the opportunity for a hearing within 10 days of the suspension. Any person found to be selling fireworks after his license has been suspended pursuant to this section shall not have his license reinstated for a minimum of one year from the date of suspension.

160-B:15 Advertising.

I. No person shall advertise fireworks by means of radio, television, newspaper, flyer, catalog, billboard, mobile or stationary sign, or any other means in such a way as to confuse or mislead the public about:

(a) The conditions under which fireworks may be purchased.

(b) The conditions under which fireworks may be used.

(c) The requirements contained in RSA 160-B or any other provision of state or federal law or regulations.

II. Any person who violates the provisions of this section shall be guilty of a misdemeanor.

III. Any advertisement for the sale of fireworks shall at a minimum contain the words: "Check with your local fire department to see if permissible fireworks are allowed in your community."

160-B:16 Certain Sparklers Prohibited; Penalties.

I. Notwithstanding any law to the contrary, the sale, possession or display of class "C" sparklers or those sparklers consisting of a wire or stick which contain chlorates or perchlorates is prohibited.

II. Any person who sells or possesses with intent to sell class "C" sparklers or sparklers consisting of a wire or stick which contain chlorates or perchlorates shall be guilty of a misdemeanor.

III. Any person who displays or possesses without intent to sell class "C" sparklers or sparklers consisting of a wire or stick which contain chlorates or perchlorates shall be guilty of a violation.

Permissible Fireworks

160-B:17 Sales of Permissible Fireworks Allowed. Notwithstanding RSA 160-B:2, a person who is licensed pursuant to RSA 160-B:6 may sell permissible fireworks to a person 21 years of age or older. Any person who sells permissible fireworks shall not mix permissible fireworks with any other fireworks when displaying them for sale. Any person who sells permissible fireworks shall post in a conspicuous place on the sales premises a list, prepared by the commissioner, of all municipalities in the state where the display or possession of permissible fireworks is prohibited.

160-B:18 Possession and Display of Permissible Fireworks. Notwithstanding RSA 160-B:4 a person who is 21 years of age or older may possess permissible fireworks except in an municipality which has voted to prohibit possession pursuant to RSA 160-B:10. Notwithstanding RSA 160-B:3 a person who is 21 years of age or older may display permissible fireworks on private property with the written consent of the owner or in the owner's presence or as authorized by RSA 160-B:7, except in a municipality which has voted to prohibit display pursuant to RSA 160-B:10.

160-B:19 Distribution of Pamphlet Required. Any person engaged in selling permissible fireworks shall provide to the purchaser a pamphlet, approved by the commissioner, detailing the appropriate and safe use of the permissible fireworks being sold.

7 Fireworks Added. Amend RSA 169-B:32 to read as follows:

169-B:32 Limitations of Authority Conferred. This chapter shall not be construed as applying to persons 16 years of age or over who are charged with the violation of a motor vehicle law, an aeronautics law, a law relating to navigation or boats, a fish and game law, a law relating to title XIII, **a law relating to fireworks under RSA 160-B** or any town or municipal ordinance which provides for a penalty not exceeding \$100 plus the penalty assessment.

8 Repeal. The following are repealed:

I. RSA 160-B:1, V-a, relative to the definition of permissible fireworks.

II. RSA 160-B:8, V-a, relative to rulemaking for permissible fireworks.

III. RSA 160-B:17-19, relative to permissible fireworks.

9 Effective Date.

I. Section 8 of this act shall take effect April 1, 1994.

II. The remainder of this act shall take effect upon its passage.

### AMENDED ANALYSIS

This bill allows the sale of permissible fireworks, as that term is defined under this bill, until April 1, 1994. The bill gives the commissioner of safety authority to immediately suspend a license issued under RSA 160-B if the licensee is selling fireworks in violation of the law. The bill also prohibits certain sparklers and misleading advertisements about fireworks.

This bill results from a study committee established by 1991, 286.

SENATOR CURRIER: This bill is a direct result of another long and tedious summer study committee. The bill basically offers terminology for safe and sane fireworks. It has been a compromise position between not only the fireworks, the public safety individuals throughout the state, plus the industry officials who worked on it. The amendment that is on page 11 of the calendar today specifically refers to a class of sparkler, which would be also added to the list. It was inadvertently left off of the list and all parties agreed to the addition to this in terms of the amendment. The committee recommends the amendment as it is on page 11 of the calendar and the recommendation of ought to pass with amendment.

SENATOR PODLES: Senator Currier, when they are talking about sparklers are they referring to the sparklers that children hold?

SENATOR CURRIER: Yes, Senator Podles. One of the delegate debates regarding the issue of safe and sane fireworks came in result of the medical community with regard to the sparklers that children hold in their hand in terms of the nature of the industry. It was determined that a specific certain sparkler, the one that has the color in it and so forth, those are the ones that would not be in the same classification as safe and sane. That is my understanding. Normal sparklers would.

SENATOR PODLES: The one that the child holds.

SENATOR CURRIER: Right. It is safer and saner if you can believe that. I mean safe and sane is really kind of a crazy terminology with regard to this because in the hands of anybody who is not famil-

iar or properly trained in the use of fireworks, you know, nothing is safe and sane. I mean, obviously, if you give a three year old kid fireworks and he doesn't know what to do with it, he is going to get hurt. Safe and sane has a lot to do with responsibility of the people who have in their possession, fireworks. This is a real attempt to get in an organized fashion a specific listing of fireworks that has been agreed from an industries standpoint and a professional firefighter, public safety ethics on the books in a test mode, because it sunsets it out over a two year period, if in fact it doesn't work out. In other words, it would have to be reenacted.

Committee amendment adopted.

Ordered to third reading.

**SB 363**, an act relative to health insurance coverage of autologous bone marrow transplants. Insurance committee. Interim Study. Senator Hollingworth for the committee.

### MOTION TO RECOMMIT

Senator Hollingworth moved to Recommit SB 363 an act relative to health insurance coverage of autologous bone marrow transplants to the Insurance committee.

Adopted.

SB 363 is recommitted to the Insurance committee.

**SB 366-FN**, an act enabling the retirement system board of trustees to invest retirement system assets in participation with commercial entities licensed by the small business administration. Insurance committee. Inexpedient to Legislate. Senator Bass for the committee.

**SENATOR BASS:** The committee recognizes and appreciates the intent, the good intentions of the sponsor of this bill. The retirement system representatives were there at the hearing. In the opinion of the committee we heard the concerns of the distinguished Senator from district #2 and it was upon that basis that the committee felt that it was not appropriate for the legislature to be getting into the business of making recommendations to the board of trustees of the retirement system as to how they should spend the money which is in essence the property of those individuals who have made those contributions. The committee urges the Senates adoption of inexpedient to legislate.

**SUBSTITUTE MOTION**

Senator W. King moved to substitute ought to pass for inexpedient to legislate.

SENATOR W. KING: I don't wish to belabor this point, but I do want to say a couple of quick things about this issue. The biggest problem that we have in the state of New Hampshire as you have heard over and over again in terms of dealing with the recession that we face, is a lack of available capital in the market place. We have a retirement system in the state of New Hampshire that has a tremendous amount of capital that could be made available in a safe and financially sound way to businesses in the state of New Hampshire. But let me ask you if you know how much is invested in small businesses in the state of New Hampshire by the retirement system? The answer to that is zero. Not one red cent is invested by the New Hampshire retirement system in small businesses in the state of New Hampshire. That is not because there aren't safe and sound investments to be made in New Hampshire, it is because the retirement system chooses to place that money elsewhere. All this bill does is say to them that we wish them to consider making some of their investments right here in New Hampshire where our businesses need the capital so that they can maintain their business and so that they can grow and add jobs. We all heard Governor Clinton today say that the greatest growth in our economy is with small businesses. That is true in New Hampshire in spades. Nine out of every ten jobs in the state of New Hampshire is created by a small business, not a large corporation, and yet not one cent of our retirement system money goes to help those small businesses. This bill would not mandate the retirement system to do anything, it would just say that we believe that as public policy that one of the considerations that the retirement system ought to make is to examine making some investments in small business in the state of New Hampshire that are financially sound and are as sound as investments that they would make anywhere else. I urge you to vote for the motion of ought to pass.

SENATOR BASS: I rise in opposition to the substitute motion of ought to pass. I would reiterate the point that I made a minute ago that what we are proposing to do here is to involve ourselves, not forcefully, but sort of indirectly, and tell an independent board that is responsible for collecting money from the employees and taxpayers of the state how we think that money should be invested. This is something that the legislature has not done before. The last time an effort was made to deal with this sort of issue of trying to guide the board of trustees, it was an effort that was made by the governor of



New Hampshire in the earlier 80's and that was defeated by the House. Let us look at this amendment for this bill for a second and see if it does what it really says it does. The first sentence says, and it is only a one sentence change. "The members of the board of trustees shall also have power to invest and reinvest at a maximum of 10 percent". Well, they already have the authority to invest 10 percent. Matter of fact, they have the authority to invest 100 percent if they want to. So it really doesn't give them the right to do anything at all because they already have the right. In fact, you could say that it might actually limit the right that they might have to invest more. Then continuing along it says "in participation with commercial entities in the state of New Hampshire", commercial entity is not defined, "which are and which lend to". So I guess it means that you could invest money in commercial entities, whatever they are, "which lend to", which I guess means it is a bank or something like that, "or invest in" so any bank that invested in a small business, "small businesses in this state". There is another problem and that is that small businesses isn't defined. Now, one persons definition of a small business may be different from that, for example, of the federal government, whose definition of a small business is substantially larger. It is my feeling, and again, I will reiterate, that this bill is certainly well intentioned, it is a good idea to promote small business in the state, but to utilize somebody elses money that has been set up by statute to be independently managed and not touched by the legislature and to encourage them to invest in small businesses in such a vague and undefined fashion that I don't think that it is worthy of putting into statute and I urge your opposition to the pending motion.

SENATOR W. KING: Senator Bass, do you believe that the retirement system ought to invest in small businesses in New Hampshire rather than small businesses out-of-state?

SENATOR BASS: I believe that the retirement system should invest in businesses or other investments that are in the best fiduciaries interest of the assets of the retirement system and that there should not be any strings attached to that investment priority. It would be a terrible shame if we as legislators put pressure on the retirement system to make any kind of an investment that led to a loss of resources for those individuals in this state who are depending on the assets and the returns in that system for their sustenance in their senior years.

SENATOR W. KING: Senator Bass, if we have a plastics factory in New Hampshire that employs 20 people and a plastic factory in New Jersey that employs 20 people, it pays the same kind of return on the

loan that is made that is exactly the same terms in New Jersey and in New Hampshire, in which state should the New Hampshire retirement system make an investment?

SENATOR BASS: I would suggest to you that your bill does not even address that question. It says that it "may invest funds in participation with commercial entities in the state of New Hampshire". Now does that mean located in the state, incorporated in the state, doing business in the state, moving to the state, moving out of the state? The fact is, is that what this thing says is that you could invest in any small business in the state of New Hampshire.

SENATOR NELSON: I rise in support of my colleague from Peterborough and also commend my colleague from Rumney. I would hasten to add that it is within the purview of the retirement board to invest in small businesses anywhere. I think, and as of matter of fact, in New Hampshire, New Hampshire businesses have come before the retirement board. For us to get deep down and dirty into the retirement system and money management and try to dictate to them by legislation where we should be investing money is wrong. Do I think that we should invest in New Hampshire? Absolutely! Do I want to see New Hampshire small businesses grow? Absolutely! As a member of the board of trustees of the retirement, for not a long time, but for seven or eight months, I can tell you that they are managed by bonafided and well respected and highly paid individuals who make investments in the best investments for the people in the retirement system. I'm sorry that we are in economic troubles, problems with the state economy, but to look to the retirement board to bail out the state of New Hampshire at this time is inappropriate. It is not our place to get deep down and dirty into the retirement system. I commend this gentleman from the north country who is working hard. I don't feel that this is the way to solve the economic problems of the state.

SENATOR COLANTUONO: I just wanted to point out that this well intentioned bill, I believe, is covered by a law that we already passed last year which amends the same section to say and I will just read it quickly. "The board of trustees shall to the greatest extent possible use the funds of the retirement system to benefit and expand the economic climate within the state of New Hampshire". So I think that is better language, because it gives the latitude to the retirement system to invest it in the wisest possible manner without regard to the language which is in this bill which I would agree with Senator Bass is somewhat ambiguous. I would also like to point out that by focusing on small business, we are leaving out large businesses which in fact have the capacity to establish more

jobs at a faster rate and lead us out of the recession much easier. So that is another reason why I oppose the bill and support the committee recommendation of inexpedient to legislate.

SENATOR CURRIER: I rise in support of small business and the substitute motion of ought to pass. It is obvious from Senator Colantuono's testimony that we led the horse to water but he didn't drink yet, and another shot in the arm in terms of sending the retirement system the message that they ought to reinvest in New Hampshire, I think, is a good idea at this time.

SENATOR OLESON: I rise in support of the bill, SB 366. As I read the bill it does not compel them to invest any 10 percent, but it does urge them in that direction. Now as my memory serves me right, it was some years ago in my early days in the legislature, we did interfere in telling the retirement board to shape up and invest the money in a little more than two percent, which two percent at that time they thought was high enough and we wanted them to do three and half percent. So we have interfered in the past. I think that when we get talking about economic development this is the direction when we can urge the board to invest in home money. I think, that is the direction that we should take. Thank you, Mr. President.

SENATOR HUMPHREY: I want to commend Senator Bass for his remarks. The highest calling of the retirement board or whoever chooses these investments is to discharge its fiduciary responsibilities and there ought not to be any political considerations in there whatsoever. So I rise in support of Senator Bass and the state employees past and present.

The question is on the substitute motion of ought to pass.

A roll call was requested by Senator W. King.

Senator W. King withdrew his motion.

Referred to Economic Development committee (Rule #24).

Senator Heath (Rule #42).

**SB 431-FN-LOCAL**, an act creating liens in favor of health maintenance organizations for certain benefits provided. Insurance committee. Inexpedient to Legislate. Senator Colantuono for the committee.

SENATOR COLANTUONO: I am pitch-hitting for Senator Russman here. This bill would create a statutory lien for HMO's similar to the one that is provided by statute for hospitals for any benefits, any costs, they incur for health care when the injured party is able to recovery under a civil suit or judgement. Presently, all HMO's have a

contractual lien which, in the opinion of the committee, fully satisfies their concern. There is no need for a statutory lien. There would be a lot of problems to give them a statutory lien. The committee felt that it wasn't warranted and voted inexpedient to legislate.

Committee report is adopted.

**SB 435-FN**, an act relative to temporary, seasonal and part-time state employees. Insurance committee. Interim Study. Senator Bass for the committee.

**SENATOR BASS:** This bill was introduced to assist the ski areas in being able to better manage their employee work forces or perhaps more efficiently manage them. In the course of the hearing, however, the committee was advised that the scope of this bill was really all state employees and there was no indication, either in the fiscal or from anybody testifying, as to exactly who would be affected by this. Subsequent to the hearing, the members of the committee became aware of the fact that there were a lot of individuals who might be affected and it was felt that before we pass this bill, we really ought to get a handle on what the affect might be, understanding that the original intent was to deal with a very small group of individuals who were working in a part time industry. So the committee urges the Senates' adoption of its report and recommendation of interim study.

SB 435-FN is sent to interim study.

Recess.

Out of recess.

**SB 442-FN**, an act requiring the state to agree in negotiations to provide less than 100 percent coverage of medical expenses and to pay no more than 80 percent of health insurance premiums for current and retired state employees. Insurance committee. Inexpedient to Legislate. Senator Hollingworth for the committee.

**SENATOR HOLLINGWORTH:** The committee on insurance would like to move inexpedient to legislate on SB 442. SB 442 proposes to establish limitations and collective bargaining that would clearly violate RSA 273-A, the public sector collective bargaining law. Presently the subject of wages and benefits are negotiable. Any proposed agreement must come before this body for final action. To arbitrarily set limits in any negotiations in order to pre-set the outcome, is not collective bargaining and would be unfair labor practices on our part. Government should not, whether it be an employer or an enforcer of our laws, dictate how management and labor reach an agreement. To propose these changes is not only unfair, but under present law, illegal. This body will have time to act when we either

have an agreement to fund or a fact finders report to vote on. We cannot short-circuit the bargaining process.

SENATOR HUMPHREY: Mr. President, there is an amendment being passed around. When I testified before the committee in the initial hearing, I asked that when the bill was marked up in executive session that a certain major change be made. Somehow that didn't happen and so I am now seeking to deal with that problem with means of a floor amendment which is being passed around. The intent of the bill as amended, if amended, is to preclude the state from negotiating to pay or agree to pay first dollar coverage for state employees. I suppose most members know, probably all members know, but probably most of the public do not know that our state employees have first dollar coverage under their medical insurance policies. Rare is the private sector employee, rare is the person in the private sector who today has first dollar coverage. I am a small businessman and I have two employees. I pay for their health insurance and I can assure my colleagues that my small business like any small business, cannot afford the premiums on first dollar coverage insurance policies. My employees and I have a deductible, pretty substantial deductible and still our insurance premiums are out of sight and getting worse every year. I think that it is just irresponsible for the state of New Hampshire to continue paying first dollar coverage under its insurance policies carried for state employees. We can't afford it in the first place. First dollar coverage is enormously expensive. Second of all, it is bad policy. There isn't a health expert on any side of this issue, democrat or republican who will not agree that first dollar coverage encourages over subscription of limited resources, deductibles, that is because human nature is such that if you subsidize something it is over subscribed. I'll bet you almost, I'll bet you no one in this room who pays his own premiums or who works for a private sector business has first dollar coverage. That is because it is unaffordable. It is also bad policy because it encourages over subscription of limited resources. So the bill as amended, if amended, would say, as the amendment says, the amendment is in a nature of a substitute, it says "the state shall not negotiate or agree in negotiations to provide 100 percent coverage of medical expenses for current or retired state employees". It doesn't say that the state shall negotiate to pay 80 percent or 85 percent or 60 percent or 99 percent, it leaves it entirely up to the negotiators. It just says that they shall not agree or negotiate to agree to providing 100 percent coverage. I think anyone of us would have a very difficult time, especially nowadays, justifying to our constituents, endorsing the current policy which is to provide 100 percent, the first dollar coverage to our state employees. So I offer that amendment,

Mr. President, and urge the Senate to adopt it. This will eliminate, incidentally, a provision of the original bill to which the state employees are particularly opposed.

Senator Humphrey offered a floor amendment.

**5003L**

**Floor Amendment to SB 442-FN**

Amend the title of the bill by replacing it with the following:

**AN ACT**

requiring the state to agree in negotiations to provide less than  
100 percent coverage of medical expenses for current  
and retired state employees.

Amend the bill by replacing all after the enacting clause with the following:

1 New Paragraph; Negotiations for Health Insurance; Limits Added. Amend RSA 273-A:9 by inserting after paragraph V the following new paragraph:

VI. The state shall not negotiate or agree in negotiations to provide 100 percent coverage of medical expenses for current or retired state employees.

2 Effective Date. This act shall take effect July 1, 1992.

**AMENDED ANALYSIS**

This bill requires the state to agree in negotiations to provide less than 100 percent coverage of medical expenses for current and retired state employees.

SENATOR DISNARD: We have gone through this for several years. As I recall there have been cease and desist orders against the governor for attempting to enter into the negotiation process. We are now still in the middle of the negotiation process. During the summer if you would have asked the state people, they would tell you that they haven't been meeting, they haven't been meeting, they haven't been meeting. If the state is irresponsible in carrying out the labor laws here, then I don't think that we, once again, should enter into this process. Let the process handle itself. I won't disagree about where the dollars are going to come from and who shall pay what portion, I just disagree in the method in which the Senate is looking at now, and I hope that you defeat it and stay out of the negotiation process.

SENATOR MCLANE: Senator Disnard, I remember that I was Chairman of EDA at the time that the original negotiations about the 100 percent coverage came into effect. Isn't it true that what we

traded with state employees was an 11 percent over two years increase in return for the 100 percent coverage?

SENATOR DISNARD: Yes, I understand that as true. Senator, are you saying in answer to your question that perhaps the Senator who introduced this should introduce that 11 percent compounded that the state employees lost?

SENATOR MCLANE: I guess that my other question would be, isn't it true that state employees would think that that was fair. This was of course before the negotiating bill went through, but isn't it true that that is the essence of the issue, that if we give up 100 percent, you give us 11 percent?

SENATOR DISNARD: The state employees at that time entered in good faith negotiations and now they are being turned against them and that is not realistic.

SENATOR FRASER: Senator Humphrey, the amendment 5003L negotiations for health insurance, first of all, Senator, you keep saying first dollar coverage, is it not so, maybe I stand corrected, don't the state employees have a two call deductible?

SENATOR HUMPHREY: In the matter of office visits to doctors, they pay for the first two visits. If they have surgery or any other medical procedure they get first dollar coverage.

SENATOR FRASER: So there is a deductible on office visits?

SENATOR HUMPHREY: On the first two doctors visits, but in all other categories of medical care, they have first dollar coverage. May I say that on the third and all subsequent visits to doctors it is first dollar coverage, no deductible.

SENATOR FRASER: I guess my other question, Senator, is this; what troubles me is that if there is no negotiation then this renews the 100 percent, this wouldn't address that. If this negotiation clearly, those negotiations, I would assume, would result in something less. That is maybe not a question, but, I guess I am not sure of that the language is correct to address what you are aiming to do with this amendment.

SENATOR HUMPHREY: Well if I may respond. It leaves to the negotiators, the exact figure to be paid. It could be 99 percent, I hope that it won't be that high, but the point is for the Senate to go on record as saying that we no longer can afford this first dollar coverage and furthermore, it is bad policy.

SENATOR COLANTUONO: Senator Fraser, I am asking you this question because of your insurance background, but because of the question that you just asked, which is that the current plan has a two

call deductible, in other words, there isn't presently 100 percent coverage. Under the strict terms of this amendment, would the present plan be a plan that could be negotiated? If this bill were to pass, could the present plan the state employees have be one that could be negotiated under this bill because of the fact that the present plan does not provide 100 percent coverage?

SENATOR FRASER: I think the answer is yes, but I am not certain that I understand your question, Senator. It just strikes me that right now the plan is a two call deductible, which means that they don't have 100 percent coverage. The proposed amendment talks about the negotiations. I think that given that in some point in time, hopefully, there will be an agreement between the two parties. I just don't believe that Senator Humphreys proposed amendment does anything to that, when incidentally, he acknowledges that the negotiations or whatever you want to call them, could be 99.9 percent of what they have today. I don't know if that answers your question or not.

SENATOR SHAHEEN: Senator Humphrey, I missed a lot of the discussion, because I couldn't hear it, so I don't know if this has been asked before. Isn't it true, Senator Humphrey, that the state could, under the current system of collective bargaining and negotiations, negotiate a contract with the state employees that does not provide 100 percent coverage for health benefits?

SENATOR HUMPHREY: Could the state do that?

SENATOR SHAHEEN: Yes.

SENATOR HUMPHREY: I hope so.

SENATOR SHAHEEN: So doesn't it follow then that there is no reason for this bill?

SENATOR HUMPHREY: Well, you might think so from your point of view, but from my point of view, I think that it is worth enforcing.

SENATOR SHAHEEN: But in fact, shouldn't we assume that the state's negotiating position is going to be one that is going to try and produce the best agreement for the state?

SENATOR HUMPHREY: I can only respond by saying that so far with respect to health insurance premiums, with respect to health insurance coverage and with the admitted exception of the first two office visits to doctors, it is 100 percent and I am not too optimistic that that is going to change unless the public becomes aware that their servants are getting better insurance than their masters, than the taxpayers. I am trying to raise public awareness, frankly, by bringing this issue to the floor. I think that when the voters find out



that their public servants have vastly better health insurance than the taxpayers who pay the premiums that there is going to be some little irritation about it.

**SENATOR SHAHEEN:** But isn't it true, Senator Humphrey, that in the past one of the things that has happened is that the state has not been able to compete with the private sector in terms of the salaries that we provide and that one of the things that we have done in exchange for that is to provide some of that support in health coverage benefits?

**SENATOR HUMPHREY:** I don't know, I have heard that said, but I hope that . . . 1975 which may I point out, was 17 years ago and I hope that agreement is not binding.

The question is on the adoption of the floor amendment.

A roll call was requested by Senator Humphrey.

Seconded by Senator Heath.

The following Senators voted yes: Heath, Roberge, Colantuono, Poldes, Humphrey.

The following Senators voted no: Oleson, W. King, Fraser, Hough, Currier, Disnard, Bass, Pressly, Nelson, McLane, J. King, Shaheen, Delahunty, Hollingworth, Cohen.

Yeas 5

Nays 15

Floor amendment fails.

Committee report of inexpedient to legislate is adopted.

The following Senators were excused: Blaisdell, Russman, St. Jean.

## HOUSE MESSAGE

### HOUSE CONCURS WITH SENATE AMENDMENTS

The House of Representatives concurs with the Senate in its amendments to the following entitled Bill sent down from the Senate:

**HB 1053-A**, relative to state revenues and expenditures.

Recess.

Senator Currier in the Chair.

**SB 427-FN**, an act requiring the registration of sexual offenders. Judiciary committee. Ought to Pass with Amendment. Senator Poldes for the committee.

**4908L****Amendment to SB 427-FN**

Amend the bill by inserting after section 1 the following and re-numbering the original section 2 to read as 3:

2 Applicability. This act shall not apply to persons convicted of a sexual offense prior to the effective date of this act.

SENATOR PODLES: Mr. President, SB 427 is the result of an Adhoc committee to study the rape statutes under the leadership of Senator Fraser. It creates a state registry for sexual offenders and it is designed to assist police in keeping track of known sexual offenders who were convicted by requiring them to register with local authorities in a new network called 'LENS', it stands for Law Enforcement Names Search. It is maintained by the state police. Fifteen states already have such registries. The committee felt that it was time for New Hampshire to join the growing network and time to take away the secrecy of convicted offenders that they now have in a community. The amendment adds new language to the effective date. This will not apply to persons convicted prior to the effective date of this act. The committee recommends ought to pass with amendment.

Committee amendment adopted.

Ordered to third reading.

**SB 316**, an act establishing a committee to study cable television rates and the possibility of introducing competition into the marketplace in order to lower rates. Public Affairs committee. Ought to Pass with Amendment. Senator Nelson for the committee.

**4872L****Amendment to SB 316**

Amend paragraph I of section 1 of the bill by replacing it with the following:

I. Two representatives from the science and technology committee, appointed by the speaker of the house.

Amend paragraph V of section 1 of the bill by replacing it with the following:

V. One representative of a municipality with a cable contract, appointed by the New Hampshire Municipal Association.

SENATOR NELSON: This is a wonderful bill sponsored by Senator Colantuono and Senator Heath and Representative D. Wheeler. This bill establishes a committee to study cable television rates and the possibility of introducing competition into the marketplace at lower rates. I would refer you to page 12 of your yellow calendar. You will

note that the amendment merely adds two Representatives from the science technology committee. We also amended and added one Representative of a municipality with a cable contract appointed by the New Hampshire Municipal Association. That is all that we did to this great study bill that was sponsored by Senator Colantuono and Senator Heath.

Committee amendment adopted.

Ordered to third reading.

**SB 344-FN**, an act relative to filing fees for multiple tax abatement applications filed with the board of tax and land appeals. Ways and Means committee. Inexpedient to Legislate. Senator McLane for the committee.

Recess.

Senator Dupont in the Chair.

**SENATOR MCLANE:** Senator King put in three bills having to do with the tax and land appeals board. This was a hard thing to do to make them inexpedient, because it was the day that his baby was born. But we were informed by Ignatius MacLellan who is on the board that the first bill was not drafted correctly. Dick Grodin, the Representative who is the Chairman of Municipal and County Governments came over and told us that the county and municipal governments committee had been studying the land appeals board for four years and had come up with a bill that is numbered HB 1405 and that that bill more appropriately and with more study addresses certain problems in the land and tax appeals board.

Committee report of inexpedient to legislate is adopted.

**SB 345-FN**, an act requiring reimbursement of certain filing fees paid to the board of tax and land appeals. Ways and Means committee. Inexpedient to Legislate. Senator Colantuono for the committee.

**SENATOR COLANTUONO:** The committee recommended inexpedient to legislate on this. This was the second of the three bills and again, for the same reason that the matter can be better handled on HB 1405 if it is to be handled at all.

Committee report of inexpedient to legislate is adopted.

**SB 447-LOCAL**, an act increasing the rate of interest paid on the amount of taxes abated. Ways and Means committee. Inexpedient to Legislate. Senator McLane for the committee.

SENATOR MCLANE: This is the third bill that is felt to better cover in HB 1405. It also does have another part to it. It just nicks the cities and towns a bit and the question of whether that is a 28-a mandate.

SENATOR W. KING: First of all, the subject of this bill is not dealt with in HB 1405 that is coming over from the House, I want to make that clear. I am not going to take up a lot of time here, I just want to ask one simple question. Today the citizens in our towns who appeal their property taxes have to wait four years to get justice, four years. Now if they prevail in the legal process, the town has to pay them six percent interest on the monies that they have been paying the town for taxes. If they don't pay their taxes, they have to pay the town 18 percent interest on their taxes. If you were a selectman in a town and strapped because of a ridiculous tax system in the state of New Hampshire and somebody came to you to appeal their taxes and you knew that you could borrow at six percent for four years, their dollars, by merely refusing to even consider that they might have a legitimate case, would you not just pass that responsibility along to the Board of Tax and Land Appeals so that you could borrow the taxpayers money at six percent interest. All this bill does is say, look, everybody is on equal footage, if the town is wrong and if they pay the same percentage interest to the property taxpayer, if the property taxpayer is wrong, they pay the same percentage interest to the town. I encourage you to vote against the motion on the floor.

SENATOR MCLANE: I guess I had better speak again to say why Municipal and County Government felt that HB 1405 did apply to this question as well. The reason is, is that they, too were appalled that the Tax and Land Appeals Board would take four years and hold somebody's money for that long a time. They have made two very significant changes in their bill to speed up the process, including eliminating the fact that someone would have to re-file every year. I do think that the point remains that if you are telling the towns that people are going to have to get the same percentage back, it is going to cost the towns, and that they have addressed that.

SENATOR W. KING: Senator McLane, if you were a town official and you don't have to pay the same interest that the property taxpayer has to pay, you only have to pay six percent interest if you just refuse to even acknowledge that they might have a legitimate claim, would you not be tempted to just past that along and figure that you were going to be able to borrow that money for four years at six percent interest?

SENATOR MCLANE: That is what I am saying. One, is that part of the cost is the four years, and they are trying to eliminate that. I guess really the other thing that I am trying to say is that municipal and county government and Chairman Grodin feel that they have really studied this issue of the Land and Tax Appeals and that they are the ones to suggest certain changes. That bill will come over to us, 1405, and if at that time that we felt that you could get away constitutionally with changing that rate of interest, I believe that we might consider it.

SENATOR W. KING: Senator McLane, is Representative Grodin still a selectman in the town of Jeffrey?

SENATOR MCLANE: I am not sure.

SENATOR W. KING: Just one last question. Do you believe that towns should have to pay the same interest to a property taxpayer that the property taxpayer has to pay to the town in the interest of fairness and in the interest of moving the system along?

SENATOR MCLANE: I am not sure whether that should be six or twelve percent.

SENATOR COLANTUONO: There are several other reasons why the committee voted inexpedient to legislate as Senator McLane said. The whole strategy on all three bills is to wait until 1405 comes over to us and then we can do our own work and add or subtract as we see fit. Using the principles behind this bill so that it is a coordinated approach, but beyond that, this bill itself has some problems. First of all, the way that it is drafted, the rate that the town has to pay, goes up to 12 percent. The committee had a problem with the fact that if the taxpayer loses, as it is, as high as 12 percent now in this day and age, of course this was passed back when interest rates were high, in a day and age now when you get 3 percent on a pass-book, 12 percent is absurdly high anyway. We were thinking that part of what we were going to try and do under 1405 is to change that whole system and make it a market rate and not put it into statute. So that is point one. Point two is, and this related to the question that Senator King just asked Senator McLane, shouldn't the town in fairness be forced to pay back the same rate. That is very much an open question. We had strong testimony from the Municipal Association against that because Bernie Waugh came in and testified very strongly that the reason that the legislature put this differential in in the first place was to encourage the taxpayers to make sure that they paid their taxes. Because the flip side of the question which hasn't been addressed yet is, how fair is it to all of the other taxpayers in the town if you have a built-in incentive for

taxpayers who think that they are entitled to an abatement, not to pay their taxes? It will then have to be picked up by all of the other taxpayers and there won't be enough money in the till and they will have to go out for tax anticipation notes and then it, in effect, increases the property taxes on everyone and I know that that is the last thing that anyone wants to do here. So it is our strong recommendation that this whole question be handled when 1405 comes over. It will give us some more time to think about it. I think the feeling on the committee was something should be done about this six to twelve differential, but certainly the answer isn't just to raise the six to twelve.

SENATOR J. KING: I think that this question is a very important one at the present time. I think that it is an unfair situation where they charge you twice the interest rate in return. Just to make sure that this is addressed, I would suggest that we pass it and then if they pass 1405, the group can get together and work out the problems. But I definitely think that we should pass it so that it will be acknowledged that there is a problem there.

SENATOR HEATH: I feel like I am sandwiched in between two Kings and I am supporting them both. I think with all due regard to my friend at arms length here, Senator Colantuono, asking that we wait, is like asking the guy who is being hijacked on the corner, mugged if you will, to wait for the next town meeting to appropriate the money for some police. I would suggest to all of you that the people who are asking to wait, are the people that are doing the mugging that reside in the House Municipality and County Government committee, some of who I count as friends. But this is ridiculous. It isn't just the money differential, it is that they have an incentive not to move the process because they are making money from it. That is not the way. I would hope that you all would agree. That is not the way to raise money for the town. They do a lot of these kinds of things that are inappropriate ways to fund a town and I would urge you, as the Senator Kings have urged you, to pass this bill and send a message to them now!

### SUBSTITUTE MOTION

Senator Pressly moved to substitute ought to pass for inexpedient to legislate.

Adopted.

Ordered to third reading.

## SPECIAL ORDER

Senator Delahunty moved that we make SB 449, SB 457, SB 458, SB 465 a Special Order for Wednesday, February 19, 1992 at 1:00 p.m.

**SB 449-FN-A**, an act relative to venture capital and a tax credit against the business profits tax. Ways and Means committee. Interim Study. Senator McLane for the committee.

**SB 457-FN**, an act relative to sale of beverages by beverage manufacturers. Ways and Means committee. Ought to Pass. Senator Russman for the committee.

**SB 458-FN-A**, an act creating a credit against the business profits tax for conversion of defense production to civilian production. Ways and Means committee. Interim Study. Senator McLane for the committee.

**SB 465-FN-A**, an act relative to charitable gambling. Ways and Means committee. Majority Report: Inexpedient to Legislate. Senator Colantuono for the Majority. Minority Report: Ought to Pass with Amendment. Senator McLane for the Minority.

Adopted.

## ANNOUNCEMENTS

### RESOLUTION

Senator Delahunty moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that the bills ordered to third reading be read a third time by this resolution, all titles be the same as adopted and that they be passed at the present time; and that when we adjourn, we adjourn until Wednesday, February 19, 1992 at 1:00 p.m.

Adopted.

Senator Currier moved that we adjourn until Wednesday, February 19, 1992 at 1:00 p.m.

Adopted.

## LATE SESSION

### Third Reading and Final Passage

**SB 313**, an act relative to gender balance on boards and commissions.

**SB 316**, an act establishing a committee to study cable television rates and the possibility of introducing competition into the marketplace in order to lower rates.

**SB 340-FN**, an act clarifying the definition of a school district.

**SB 357-FN**, an act prohibiting licensure by any state agency or board where an outstanding court default or bench warrant has been issued and making license application fees non-refundable.

**SB 362**, an act redefining proprietary medicines to include nonprescription medicines and exempting non-pharmacy retail stores and outlets from classification as pharmacies for the purpose of RSA 318.

**SB 371**, an act establishing a committee to study the feasibility of year round schools.

**SB 383**, an act requiring that information be compiled regarding persons convicted of child abuse.

**SB 387**, an act authorizing legally constituted boards and commissions which are created for the purpose of state historic site restoration the option of retaining ownership of any historic site furnishings which they acquire with other than state funds.

**SB 397**, an act relative to long-term job supports for severely disabled persons.

**SB 418**, an act changing the title of juvenile services officers to juvenile probation-parole officers.

**SB 421-FN**, an act relative to fireworks.

**SB 427-FN**, an act requiring the registration of sexual offenders.

**SB 447-L**, an act increasing the rate of interest paid on the amount of taxes abated.

Senator Currier moved that we adjourn.

Adopted.

Adjournment.

*February 19, 1992*

The Senate met at 1:00 p.m.

A quorum was present.

The prayer was offered by the Rev. David P. Jones, Senate guest Chaplain.

*Well, its finally over. And now the spin doctors are hard at work, explaining to us what it all really means, as opposed to what the bad old politicians say it means. Whatever your party or prefer-*



*ences, I hope some of that spinning is helpful to you. And I hope it is helpful to the people you represent - people like me. So let me pray with you.*

*O God our creator, you have made us large and small, giants and pygmies, Republicans and Democrats, men and women - and a whole lot of other things. Bless each member of this Senate of New Hampshire. Use the uniqueness, quirks and the gifts here assembled in this chamber. We know you can do that for you have worked many miracles in the past.*

*Amen*

Senator W. King led the Pledge of Allegiance.

## INTRODUCTIONS

### SENATE CONCURS WITH HOUSE AMENDMENT

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendments, in the passage of which amendments the House of Representatives asks the concurrence of the Senate:

**SB 172-FN-A**, establishing a committee to study the board and care rates for residents of enhanced family care facilities.

Senator J. King moved concurrence.

Adopted.

### SENATE CONCURS WITH HOUSE AMENDMENT

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendments, in the passage of which amendments the House of Representatives asks the concurrence of the Senate:

**SB 220-FN**, relative to foster care.

Senator J. King moved concurrence.

Adopted.

## INTRODUCTION OF HOUSE BILLS

Senator Delahunty offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House Bills numbered 1110 through HCR 25 shall be by this resolution read a first and second time by the therein listed titles, and referred to the therein designated committees.

### **First and Second Reading and Referral**

The House of Representatives has passed the following Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

**HB 1110**, relative to the method of electing delegates to state party conventions. Public Affairs committee.

**HB 1111**, relative to liquor and beverage licensees delinquent in paying accounts and relative to advertising liquor and beverages. Ways and Means committee.

**HB 1114**, adding and changing certain definitions in the liquor laws and relative to the transportation of wine and liquor. Ways and Means committee.

**HB 1126-FN**, allowing the public utilities commission to appoint a receiver or to take over the operations of any utility with annual revenues below \$2,000,000 which fails to provide adequate service. Executive Departments committee.

**HB 1130**, relative to ejecting persons from racetracks whose presence is inconsistent with proper conduct of a race meet and relative to unclaimed pari-mutuel pool tickets. Ways and Means committee.

**HB 1144**, relative to the examination of school bus operators. Transportation committee.

**HB 1148**, relative to technical corrections in certain tax laws. Ways and Means committee.

**HB 1152**, authorizing the office of child support enforcement services, a dependent child or his parent or guardian to receive directly from a health insurer a certificate of insurance covering any dependent child. Public Institutions, Health and Human Services committee.

**HB 1159-FN**, relative to when municipal sewage disposal systems are considered public utilities. Environment committee.

**HB 1185-FN**, authorizing the department of transportation to conduct surveys over certain roads, prescribe special rules for student driver training, exempt certain transportation operations from certain motor carrier statutes and relative to laying out class I and II highways. Transportation committee.

**HB 1204**, requiring the director of motor vehicles to notify any seriously injured person when the director conducts a license revocation or suspension hearing regarding a motor vehicle accident involving a fatality or serious injury. Transportation committee.

**HB 1210**, naming the Karner Blue butterfly the state butterfly. Wildlife and Recreation committee.

**HB 1242**, establishing a study committee on certain current use issues. Environment committee.

**HB 1255-FN**, relative to the number of big bingo games charitable organizations may conduct and increasing the one game date prize total value from \$3,500 to \$14,000. Ways and Means committee.

**HB 1315-L**, amending RSA 154 relative to firewards and firefighters, exempting fire investigators from having law enforcement backgrounds, extending the committee studying fire laws, and extending the state historic flag committee and making an appropriation to such committee. Executive Departments committee.

**HB 1339**, requiring the division of human services to report certain obligors to consumer reporting agencies. Public Institutions, Health and Human Services committee.

**HB 1343-FN**, establishing a committee to review wetlands projects and related issues. Environment committee.

**HB 1408-FN-L**, relative to technical changes in the unemployment compensation law and increasing the amount of taxable wages. Insurance committee.

**HB 1426**, authorizing water users registered and reporting their use to the division of water resources to continue such use for the 1992-93 biennium. Environment committee.

**HB 1449-FN**, relative to the cost of publishing school laws. Education committee.

**HB 1466-FN**, modifying the advisory council on unemployment compensation. Insurance committee.

**HB 1495-FN**, establishing a committee to study the management of New Hampshire tidal waters and related issues. Environment committee.

**HCR 25**, encouraging the operators of cable television systems to utilize a portion of their capacity to deliver commercial-free educational programming. Public Affairs committee.

Adopted.

Recess.

Out of recess.

## INTRODUCTION OF SENATE BILL

Senator Delahunt offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, Senate Bill numbered 475-FN shall be by this resolution read a first and second time by the therein listed title, laid on the table for printing and referred to the therein designated committee.

Adopted.

### SUSPENSION OF THE RULES

Senator Russman moved that the Rules of the Senate be suspended to dispense with the reference to committee the holding of a hearing, the notice of a committee report in the calendar, and that SB 475-FN be put on Second Reading at the present time.

**SB 475-FN**, relative to retirement system benefits for withdrawing nongovernmental employees.

SENATOR RUSSMAN: The reason that I asked to suspend the rules on this is that this has to do with Pinkerton Academy, when they tried to get out, or they were asked to get out of the retirement system. As you may know, Pinkerton Academy had been in the retirement system for the state for many, many years and they were asked to get out of the retirement system because they were held to be a private institution instead of a public. What two things happened that we seek to address, Senator Nelson and Senator Delahunty and myself met with the retirement system, we've also met with Pinkerton Academy to try and come up with some type of accommodation. But what it boiled down to was two separate issues. One, the retirement system said that they could only transfer money in their retirement account to another plan. In other words, a plan to a plan. There were some members of the Pinkerton Academy facility and administration that were over 50 that wanted to take it out as individuals, either to put it in an IRA or buy an annuity. The New Hampshire Retirement System said that we can't do that under the law. So this addresses that issue and allows them to make, not just a plan to plan, but also, plan to an individual as a lump sum. The other issue that it addresses and obviously would get a full hearing in the house, is when they sought to get out of the system or the system asked them to leave. They calculated that they would give them about \$5,000,000, effective as of June 30. The problem is that they won't give them any interest on their money, even though it isn't their fault for having to get out. In other words, from June 30 to whenever the transfer is made, they are saying that they are not going to give them any interest. This addresses that issue. Now the retirement system basically said that, well, we figured it three ways, high, medium and a low, and we gave them the high, so therefore, they shouldn't look a gift horse in the mouth and they should just

take the high and be happy to get it. Meanwhile, every day that goes by, the New Hampshire Retirement System is making money on the other peoples \$5,000,000 which, obviously, isn't correct. So we have asked in the statute at least, that they reimburse whatever money that they eventually transfer, they pay them the rate that they have been receiving, so that the \$5,000,000, whether it is this month or next month or two months from now, whenever the transfer is made, that they just give whatever they got and not make money off of the other peoples money. So we would ask you to suspend the rules in order to have at least this come before the Senate and pass the Senate and then it would, I assume, be heard fully in the House under the House rules.

A 2/3 vote is required.

Adopted.

The necessary 2/3 vote is acquired.

Ordered to third reading.

### **First and Second Reading and Referral**

**SB 475-FN**, relative to retirement system benefits for withdrawing nongovernmental employees.

### **SUSPENSION OF THE RULES**

#### **Third Reading and Final Passage**

Senator Russman moved that the rules of the Senate be so far suspended as to allow Senate Bill 475 to be on third reading and final passage at the present time.

Adopted.

### **RESOLUTION**

Senator Cohen offered the following resolution:

**SR 2**, proclaiming October 12, 1992 as Native American Day, which day also commemorates the 500th anniversary of the arrival of Christopher Columbus.

**5005L**

**SR 2**

STATE OF NEW HAMPSHIRE  
In the year of Our Lord one thousand  
nine hundred and ninety-two

## A RESOLUTION

proclaiming October 12, 1992 as Native American Day, which day also commemorates the 500th anniversary of the arrival of Christopher Columbus.

Whereas, on October 12, 1992, the people of America and New Hampshire will observe the 500th anniversary of the "discovery" of North America by Christopher Columbus, despite the fact that the continent had been home to many Indian nations prior to the arrival of Columbus, and

Whereas, the European nations and, later, the United States government acquired this land from the Indians by military conquest and treaty negotiations, and also through the use of massacres, starvation, and induced disease, resulting in the nearly total genocide and annihilation of the indigenous population; and

Whereas, what now exists as New Hampshire was formerly populated by the Abenaki, Penacook, Sakoki, Pigwacket, and Micmac nations; and

Whereas, the great Abenaki leader and medicine man Passaconaway, who had authority over much of what is now New Hampshire, made peace with the white settlers, while other Indians taught valuable survival skills to the settlers; and

Whereas, the early white settlers in New Hampshire refused to trade goods with the indigenous people, instead abducting them and selling them as slaves in Europe; and

Whereas, Native Americans had culture, religion, and value systems long before October 12, 1492; and

Whereas, Native Americans, or Indians, the original inhabitants of the lands that now constitute the United States, have made and continue to make an essential and unique contribution to our nation, and the indelible imprint of Native American culture on our society has enriched us all; and

Whereas, we are now at a time in our history in which respect for the environment is being re-discovered as being essential to our survival; and

Whereas, Americans of 1992 recognize that we can learn much from the history, culture, and values of the American Indian, which remain valuable and pertinent to our future; and

Whereas, Americans of 1992 recognize that ethnic pride and cultural diversity enriches our national character, now, therefore be it

Resolved by the Senate:

That in recognition of the continued survival of Native Americans and in appreciation of the vitality of their culture and values and the important contributions they make to the America of today and to-

morrow, October 12, 1992, is hereby proclaimed Native American Day, which day also commemorates the 500th anniversary of the arrival of Christopher Columbus.

SENATOR COHEN: I would urge passage of this resolution which has certainly no force of law, I just feel that it is time that we gave the Native Americans the recognition that is due to them. There are about 3,500 indians or Native Americans now living in New Hampshire. There are about 35 cities and towns in the state of New Hampshire whose names originate from the indians, Amoskeag, Baboosic Lake, Chocorua, Contoocook, Coos, Gonic, Merrimack, Nashua is an indian name, Pemigewasset, Penacook, Sunapee, Suncook, Winnipesaukee, Winnisquam and enough harm has come to the Indians over the years and this is the year that we celebrate the 500th anniversary of the arrival, I won't say discovery, the arrival of Christopher Columbus to these lands and it just seems appropriate to me, that we recognize the Native Americans this year as we also celebrate Columbus Day. This resolution will also be going through the House. Six other states have also passed similar resolutions and many more are considering such resolutions. It does not detract in any way, shape or form from Columbus Day, it is simply additional to this. It celebrates cultural diversity and recognizes the values that we have gained from the Indians or Native Americans, depending on what they choose to be called. A lot of those environmental values and spiritual values are alive and have great promise for tomorrow and I would ask my colleagues, I have spoke with many of you, if we could pass this resolution in the Senate and hope that the House does the same and the Governor does also the same. Thank you.

SENATOR HUMPHREY: Senator Cohen, I just want to be sure that this only commemorates that day in 1992, it is not a permanent date?

SENATOR COHEN: Only this date. Not a permanent date at all. It's just the 500th anniversary of Columbus just for this year alone, not a permanent day at all. It has no legal standing.

SENATOR COLANTUONO: I rise as the only Italian American member of this body in strong opposition to this resolution. You have to remember that Italian Americans only have one holiday in this country and that is Columbus Day and we celebrate it every year in a grand manner. What would Senator Delahunty think if they did this on St. Patrick's Day? He wouldn't like it. Now I am all for the Native Americans. Senator Cohen listed off all of the those fine tribes and so forth, but we have to remember all of those great italians that we celebrate in addition to Christopher Columbus, people like Michelangelo, Da Vinci, Caruso, Marconi, and now we have Al-

berto Tomba, Madonna. So I want to defeat this. This is an insult to all Italian Americans and I urge a vote of no.

SENATOR HEATH: Senator Colantuono, what do the Native Americans have for a holiday?

SENATOR COLANTUONO: Letta thema picka theirs own.

SENATOR HEATH: I didn't know that you were a racist.

SENATOR COLANTUONO: Let them have their own day.

SENATOR OLESON: I rise in support of SR 2. The biggest reason that I rise in support is that I have always been critical to an extent that on my grandfathers side, I had a bit of the blush, as they used to call it. That means that I might have a little bit of Abenaki in me. I like to think that most Americans think that the history of the new world started when Christopher Columbus happened to stop with his, I won't say the words that I have in mind that are true, to help exterminate my people and I don't like it worth a damn, to tell you the truth. I think that it is about time that we recognize that there were superior civilizations in North America, far superior to the white mans civilization when he landed and it is about time that we recognize it as such. Thank you.

SR 2 is adopted.

## COMMITTEE REPORTS

### SPECIAL ORDER

**SB 449-FN-A**, an act relative to venture capital and a tax credit against the business profits tax. Ways and Means committee. Interim Study. Senator McLane for the committee.

SENATOR MCLANE: SB 449 and 458 are the results of a lot of hard work, particularly by Senator King who was the sponsor of both of them along with Senator Cohen. Our committee felt that we were unable to go forward with passage with these bills at this time. The ones about venture capital was particularly difficult to deal with. It is probably a good idea, but when we don't even know what the results are of the bills that we passed in the last session having to do with business enterprises and the encouragement of venture capital, we felt that we were not ready to go on with the passage of the bill. We were trying to be polite to poor Senator Wayne King and so we sent them to interim study feeling that they could go over to Economic Development. They are good ideas, not exactly formed at this time. I believe that Senator King will have a motion and the thought is that they would go to Economic Development, and that interim study is the wrong motion. And so I will just let him speak



at this time. We did not want in any way, to criticize the bills as they came before us, it is just that we weren't ready for them.

**SENATOR DUPONT:** Senator McLane, so you are speaking against the motion of interim study?

**SENATOR MCLANE:** I, theoretically, am speaking for the motion of interim study and saying that there will be another motion from Senator King.

The motion of interim study fails.

Senator W. King moved inexpedient to legislate.

Adopted.

**SENATOR DUPONT:** Senator, I meant to recognize you to speak.

**SENATOR W. KING:** Well the horse is out of the barn as they say . . . as it is galloping down the field, that we will be dealing with this issue in the Economic Development committees package on capital formation.

SB 449-FN-A is inexpedient to legislate.

**SB 457-FN**, an act relative to sale of beverages by beverage manufacturers. Ways and Means committee. Ought to Pass. Senator Russman for the committee.

**SENATOR RUSSMAN:** I will report out for the committee. This piece of legislation allows a manufacturer, namely, I think, it is the Frank Jones Brewery in Portsmouth to distribute its own beverage that it actually has made on the premises there. It is kind of a creative and innovative new way to distribute liquor, beverage, I guess we call it here in New Hampshire, most of us know it as beer. This allows them to distribute up to 60,000 barrels. Now you say how does that 60,000 barrels come about, how does that number appear? Well the federal government had determined by definition that 60,000 barrels represents a small brewery. This will, matter of fact, I believe that the governor has already signed IDA bonds for this company to go forward with its business ventures and actually have our first home-grown brewery. So we certainly want to help them along and give them every opportunity. This certainly does strike a blow for the little guy in terms of doing what they want in distributing their own product. I think that in committee, there was one vote against it, but I think that everybody else on the committee was very supportive of the concept here and thought that it should be passed and sent on to the House for further consideration.

Recess.

Senator Delahunt in the Chair.

SENATOR CURRIER: I rise in strong opposition to this bill. The state of New Hampshire has a three-tiered system now in terms of beer distribution. There is a bill currently in the House that is dealing with this particular issue, that is dealing with 40,000 barrels of beer. The beer that is currently being manufactured by Frank Jones Brewery, is currently made in Vermont, a private label and then distributed here in New Hampshire. The real problem with this is that if we allow this to happen, this brewery at 60,000 barrels of beer would be, I believe, it is the fourth largest distributor of beer in New England. It would basically cut out the middlemen operation in the distribution market which would also allow, I believe, as I understand it, some of the other bigger breweries to distribute the beer direct, cutting out the distributor which is basically part of this whole free enterprise system. Cutting out all of the little guys that are making the business in the distribution of the various beers. The law that is currently on the books, relative to the three-tiered system has been on the books since 1932 and I think that it is important that we keep the system; either that or study it a little bit more in depth here in the Senate. I have a real serious problem in that regulated revenues has agreed to a 4,000 limit in their particular bill and maybe we ought to table this in the Senate or take some other action until the House bill gets over here so that we could actually . . . well this particular company, as I understand it, only distributes 2,000 barrels of beer at this particular time. So to make a significant jump to 60,000 barrels of beer, you remember that song, 100 bottles of beer on the wall? Well anyway, I am in strong opposition to this bill. I would hope that you would vote no so that we can substitute the motion of indefinitely postponed.

SENATOR COHEN: I rise in support of this bill. If we are serious about economic development and helping small businesses, this can help tremendously. This company wants to locate in Portsmouth and this will enable to create 30 to 50 jobs in Portsmouth and if it continues to grow up to 60,000 barrels, they will probably employ more people. I think that we ought to be in the business of encouraging the growth of this sort of small business.

SENATOR J. KING: I was the lone vote in the committee, I guess, that voted what they think was the wrong way. My reasons for voting that way are this; I have no objections in trying to help the Jones Brewery out, it is great. I think that they are going in the right direction by using the IDA funds and working on the same basis any other company does. This also gives the bigger companies the same opportunities that this company would have and you might end up by the bigger companies that have thousands and thousands of barrels a year of beer that are delivered and stored and cutting that

middleman out. Once you cut that middleman out, then they will do their own. The people will come and pick the products up and there are a lot more people that are involved in that in the bigger companies then you are going to gain by not having them there. I think that in this case we are almost biting our nose off to spite our face or something. I don't think that we should not help the Jones Brewery, I do think we should. But, I think that we should do it in a different manner. As I said, this is a step in the right direction with the IDA funds. I don't think that you ought to ask these other people to do, what they might do in the long run is to cut out that middleman, no deliveries, no storage, just come right to the breweries and pick it up and you can lose thousands of jobs, probably in the state of New Hampshire. That is why I opposed it and I still oppose it.

SENATOR CURRIER: Senator King, is it your opinion that this could actually create a monopoly on the part of the large beer distributors currently in operation now, like Budweiser, Coors and all of those guys, because maybe then in fact they could sell direct?

SENATOR J. KING: I certainly do. That is how monopolies are made.

SENATOR DISNARD: I think that we should commend the return of the native, in the native colonial days, the ale, the brewery was the largest in the country and I salute that they want to come back to New Hampshire and brew their beer. If we can help the small fellow, as I have heard others of you refer to them, in a nice way, as joe six-pack, if he can buy his ale or beer cheaper, good for him, I support him.

SENATOR SHAHEEN: Can someone answer for me, how many producers in the state there are who produce more than 60,000 barrels?

SENATOR RUSSMAN: I believe that there is only one.

SENATOR SHAHEEN: Who is that?

SENATOR RUSSMAN: Anheuser Busch and that is far, far in excess of 60,000 barrels, far in excess.

SENATOR SHAHEEN: Senator Russman, how many people produce less than 60,000 barrels in this state?

SENATOR RUSSMAN: I don't know. Well, as far as selling in the state, that is one thing. Producing in the state, I don't believe anybody produces, actually in the state. This whole idea is to have a home industry and a New Hampshire company that will actually make a New Hampshire product. There are a number of people who sell on the market less than that in New Hampshire, you know out-

side like Pabst and Coors, well not Coors, that is another big one, but, Miller, well no, Miller is another big one, but, Labatt, Hillman, Falstaff, those are some of the names that are manufactured outside, but they are marketed in New Hampshire. This clearly would help the New Hampshire beer company, there is no question about that, I mean that is what it is geared for. We put our bonds out there, I mean it would be nice for us to support them for economic development. This would create 30 to 50 jobs I am told in the Portsmouth area. So I mean this certainly would help the Port city and it would be unique for New Hampshire.

SENATOR SHAHEEN: Senator Russman, am I correct, that the companies that you just read off are not covered by this bill, because this addresses only those people producing in the state of New Hampshire?

SENATOR RUSSMAN: I believe it only covers the production.

SENATOR SHAHEEN: Can somebody answer that?

SENATOR RUSSMAN: That is my understanding. It is only for those who produce so this does help our home industry.

SENATOR SHAHEEN: Is there a reason why, I heard your explanation about the 60,000 figure by the federal government, but is there a reason why we are going to allow them to produce that much and why we don't set the ceiling at somewhere lower?

SENATOR RUSSMAN: Not really, except that that figure was put out by the federal government that that is how they define a small brewery, 60,000 barrels or under. Some of these other manufacturers make more than that, but I am saying what they actually market in New Hampshire. So in other words, while Anheuser Busch makes it in New Hampshire here and they make a lot more than that, these other companies, some of them probably make more than 60,000, but they distribute them in other states and so you don't see that figure. This is unique to this one particular company in one particular industry.

SENATOR BASS: Mr. President, I rise in support of SB 457 and the committee report. The question here is not whether or not you are going to put distributors out of business, the reason for that is that it is a question of volume. I have had occasion over the years to read articles and magazines about the evolution of this signature beer business. I read somewhere that the major breweries in this country spill more beer in a day than all of the signature breweries together make in a year. So the volume that we are talking about is nothing compared to what the major brewers manufacture. The problem is indeed, competition. The way that you make money, obviously, in the

beer business is through volume and these signature breweries it is a tough business to be in and you have to charge a lot per bottle. Obviously, if you tack on to that the cost of distribution of a very small amount of product, it is going to be prohibitively expensive. Now prior to the establishment of prohibition in this country and we had hundreds and hundreds and hundreds of breweries in this country and signature beer was a way of life. There is an effort now under way to restore this in which, I think, is going to be better, not only for the employment and the question of small businesses, but also to the availability to consumers. It will not lead to any hardship on the part of distributors of the major brewers, but it will certainly help the small breweries.

SENATOR COLANTUONO: I wanted to make two points that came out in the committee hearing in favor of the committee report. First of all, what this bill tries to do was legal all the way from the 30's when prohibition was overturned up until, I believe, it was 1987 or 89, just recently, just a few years ago. This was totally legal all of those years and that provision got wiped out in the recodification of the liquor laws just several years ago. The only reason that it was is because there was no companies in New Hampshire taking advantage of it, so they felt that it wasn't needed, not that it wasn't right, it just wasn't needed and now we are reinstituting it. The other point was, that this bill simply allows this to be done, it doesn't mandate or require it. The distributors that came into the committee to testify against it, almost worked against themselves by saying that 'they were a much more efficient way of doing it', they service the industry better. If all of those things are true, if this company tries to put their own destruction at work together, they will evidently find out that they can't do it as cheaply and efficiently as the existing distributors and they will go back to the distributors. So this is just a simple competition issue and I don't see any great dangers to the three-tier system here and I have no problem supporting the bill.

SENATOR HUMPHREY: Mr. President, I just want to say a few words as a member of the committee who was there at the time of the hearing. It is legal to manufacture beer in the state of New Hampshire, it is legal to sell beer at retail, obviously, and it ought to be legal for retailers to buy their beer directly from manufacturers. That it isn't, I think, is a shame and a detriment to free enterprise. This makes a small change in the law so that a small start-up business can have a chance of making it. It is an important consumer issue, it seems to me. And it is an important free enterprise issue and I don't know whether the distributors who have invested interest in the status quo have been lobbying or not, but I hope that the result of this debate now, is that all of the members who are not

members of the committee, fully appreciate what is at stake here and will vote in support of this measure.

SENATOR COHEN: Needless to say, this is a rare moment when I am in agreement with Senator Humphrey. I thought that you might pause to appreciate that. But this seems to me that this does help free enterprise and it doesn't threaten the distributors in any way. If the company starts out small, if these cottage industries start out small and we are helping them, when they reach the 60,000 barrel level they have to go through the distribution system, so it encourages them to get to that point and it doesn't inhibit them in any way, shape or form. It only helps breed small business, which is what, I think, we are trying to do.

Senator Blaisdell moved the question.

Adopted.

Question is on the committee report of ought to pass.

A roll call was requested by Senator Currier.

Seconded by Senator Blaisdell.

The following Senators voted yes: Oleson, W. King, Heath, Fraser, Hough, Dupont, Disnard, Roberge, Blaisdell, Bass, Pressly, Nelson, Colantuono, McLane, Podles, Humphrey, Russman, St. Jean, Shaheen, Hollingworth, Cohen.

The following Senators voted no: Currier, J. King, Delahunty.

Yeas 21

Nays 3

Adopted.

Ordered to third reading.

**SB 458-FN-A**, an act creating a credit against the business profits tax for conversion of defense production to civilian production. Ways and Means committee. Interim Study. Senator McLane for the committee.

SENATOR MCLANE: This is the same situation as the other. We put it to interim study, vote down interim study and vote for inexpedient, and know that the bill has merits and will go on to Economic Development.

Interim study motion fails.

### SUBSTITUTE MOTION

Senator W. King moved inexpedient to legislate.

SENATOR W. KING: Ten percent of the jobs in the state of New Hampshire are defense related. This bill is intended to begin the process of helping us to assist businesses to retool to civilian produc-

tion capacity. I moved inexpedient to legislate because the Economic Development committee will be talking about this issue and, hopefully, having something in one of the packages dealing with it.

Adopted.

SB 458-FN-A is inexpedient to legislate.

Recess.

President Dupont in the Chair.

**SB 465-FN-A**, an act relative to charitable gambling. Ways and Means committee. Majority Report: Inexpedient to Legislate. Senator Colantuono for the Majority. Minority Report: Ought to Pass with Amendment. Senator McLane for the minority.

**4822L**

### **Amendment to SB 465-FN-A**

Amend RSA 287-D:1, I as inserted by section 2 of the bill by replacing it with the following:

I. "Bona fide member" means a person who holds full and regular membership in a charitable organization.

Amend RSA 287-D:1 as inserted by section 2 of the bill by deleting paragraph VI and renumbering paragraphs VII and VIII to read as VI and VII, respectively.

Amend RSA 287-D:7, I as inserted by section 2 of the bill by replacing it with the following:

I. The games of chance license application fee shall be \$25 per day.

Amend RSA 287-D:12 as inserted by section 2 of the bill by inserting after paragraph XXI the following new paragraph:

XXII. All advertising for charitable gambling shall contain the following written or verbal notice: "NOTICE: An average of \$1 or less out of every \$5 spent on charitable gambling goes to the charitable purpose".

Amend RSA 287-D as inserted by section 2 of the bill by deleting section 13 and renumbering sections 14-19 to read as 13-18, respectively.

This bill licenses games of chance and specifies the criteria for the licensure and the operation of games of chance.

This bill repeals the current laws relative to games of chance.

SENATOR MCLANE: I move ought to pass with amendment. I believe it is being passed out now. We had the same debate about eight years ago when we looked at bingo in New Hampshire which turned into a large scale gambling business. Obviously, for the benefit of some good charities and organizations such as churches that

needed the money. There was opposition to the state of New Hampshire having any sort of an overlook and authority over bingo. I think it has been proven that the state of New Hampshire and the Sweepstakes Commission, not only has done a good job in overseeing bingo, but that that job was necessary. The same, I believe, is true of monte carlo nights and black jack. Last year we had a study committee appointed of certain gambling events, because there were problems reported with proliferation of black jack and monte carlo nights. The committee met over the summer and there was a representative from the Attorney General's Office, a representative from the governor's staff and we came out with certain conclusions. Most of those conclusions except a tax on the winnings are contained in the amendment that is before you. It is proposed that the Sweepstakes Commission would regulate monte carlo nights in the same way that we do bingo. Here are the rules that have gone through the rules committee: It is assumed that the Department of Safety would enforce the provisions relating to the operations of the games of chance in compliance with the licensing requirements and inspecting of the gambling equipment. Let me repeat again that there was no evidence that those monte carlo wheels are off kilter or can stop with a little peddle under the table, as you have seen in the movies. There was no evidence that there is anything wrong. But there was evidence that this is big business. For that reason and because it is gambling money, I believe, that it is in the state's interest to have some sort of control. The types of licensing, the operating and reporting requirements, the restrictions which currently apply to bingo, would apply to games of chance, including the need to have the person operating the machines, a bonafide member of the organization, the no compensation and no conviction requirements. The distributors of gambling equipment, and there are three in this state, two that let out the equipment and one that not only lets out the equipment, but also provides the operators for the games. The commission would be able to impose administrative fines of up to \$5,000 and the net profits from the games of chance must be paid to the charities registered with the Attorney General's Office as charitable trust and into segregated charitable funds. I believe that this is an important step. This would add representatives of about 70 charities, ranging all the way from the Nashua Boys and Girls Club to the Nashua Symphony to the New England Boxer Association, come before us and think the world was coming to an end if we had any sort of state control. This bill would in no way affect their earnings. But it is big business and if the state of New Hampshire is going to let completely uncontrolled gambling go forward in this state, I am sure that in the next few years we will have instances of legitimate charities being ripped off, of people being taken advan-



tage of and problems that one could perceive in the gambling community. So for that reason as a report of this study committee on the gambling, I would present the amendment which allows the state which already controls bingo, to also control monte carlo nights.

SENATOR DISNARD: Mr. President, I rise to speak as Chairman of the committee that reviewed the charitable gambling. I now strongly support the exclusion, that leaving out of the tax on the charitable groups. I understand their concerns and I concur with those concerns. However, I am very concerned about the lack of regulation as expressed by the Department of Safety, the lottery, the Attorney General's Office and the operation of many of these games. So I would support the amendment of Senator McLane, to regulate, it is the only gambling that is not regulated. Many of us have been to Las Vegas on casino night. We know that there is a \$1 limit. Well I daresay that most of us here who participate in those games have seen situations where those who were least able to afford it, did not stand by the \$1 limit, nor did the local police enforce the \$1 limit. If you see them play the roulette, there is possibly 27 or 37, I forget, opportunities to bet \$1 each time and allow them to bet \$5 & \$10's, then there isn't any regulation. It has been proven that many of these turntables are not accurate, they do tilt and they can be controlled. I don't want to stop any group from making money to operate. The hockey team in my area, the small football team, good, but let's regulate and be sure that these games are honest.

SENATOR COLANTUONO: I am speaking for the majority report. I rise to speak against the amendment on behalf of the majority of the committee. Basically what we have in this state with regard to monte carlo night and so forth, is local control under RSA 287-D, games of chance. It is a 2-1/2 page statute which has been on the books since 1977. So first of all, it is incorrect to say that this is totally unregulated gambling. It is regulated by this statute, passed by this legislature and it is done primarily at the local level, but not totally at the local level, because these charitable organizations, as you know, have to file reports and so forth with the Attorney General's Office, the companies that put on these games and they have to do everything any other company has to do in the state of New Hampshire. They have to get a local license from the police departments in the town, and there is that \$1 limit. We are not talking about big gambling, we are basically talking about a fun night out for people who may not have any other form of entertainment in the towns and cities where they live or can't afford other types of entertainment. In the city of Concord for example, games are run at the Ramada Inn. The city requires in addition to the license fee, that the person running the game hire two police officers to police the event

and to make sure the \$1 limit is enforced. They run very smoothly. We frankly heard no clear evidence that there is any abuse anywhere in this state by any organization. We heard a lot of superstitions that there might be a problem or that if we don't pass this that there could be ramifications in the future, but there is no actual situations that this legislation was designed to prevent. So basically, the majority of the committee felt that this was regulatory overkill, which was totally unnecessary at this time. Beyond that, if the bill passed, even with the amendment and the amendment certainly takes care of the major problems, like the tax and so forth, but if the bill passed, basically, it wouldn't simply regulate these games, it would basically, prevent a lot of the organizations from even holding these games. In the tight fiscal times that we are in now, there is no other place where these nonprofits can get funds. People are tapped out and in some instances this presents the only way that these charities can raise money. Now with regard to some specifics, if this bill passed even with the amendment which takes out the most offensive provisions, it still has rulemaking power in the Sweepstakes Commission which as we all know you can slip into rulemaking a lot of what you can't do through the legislative process and it would really hurt the nonprofits. It also takes the license revenue from the cities and towns and puts it into the state's pockets. It takes the local control away by putting it under the Sweepstakes Commission and the Department of Safety. It also prohibits, and this would prohibit what is done right here in Concord at the Ramada Inn, it prohibits any game from being held on a rented premises. It has to be on the premises of the charity. Now there are some, like in my town, the Lions Club have a hall and they hold monte carlo nights, but there are many, many charities in this state that have an office, but no hall and they would effectively be prohibited from running games if this legislation passed. In addition to that, because of the fact that you can't rent a premise, that would hurt the hospitality industry, because places like the Holiday Inns or the Ramada Inns that rent out rooms for this would lose that revenue. Another onerous provision in this bill disregarding the amendment is the documentation that is required to show that every person working at these games doesn't have a criminal record. It requires that every person working these games be a member of the nonprofit organization. So you could have the Lupus Society, for example, or the Multiple Sclerosis Society and people who belong to that organization would have to go through a criminal record check by the director of the organization before they could be certified to work there. That is very difficult to do, costly, time consuming. All these things would just add up to make it not even worth the effort for these groups to put these games on. There is also a very stiff distributors fee, \$1,000 for the

initial license to become a distributor of the equipment used and then \$500 each year thereafter. Now, these are small businesses, they don't make a lot of money and that is a very stiff fee. There is also a provision in there that would give local option to the cities and towns to totally prevent this if they wanted. So you could have a nonprofit group in a city or town that depends on this for their very existence, but if there was a vote of the municipality to do away with it, under this law they couldn't do it anymore. The other thing that the majority was worried about was that even though the tax was being taken out by the amendment, once this bill passes, you can be sure that with the money problems that the state's in that the tax will be back in next year. So for all of those reasons, because there wasn't a perceived need for this regulation, the committee majority strongly recommends that it be voted inexpedient.

SENATOR DISNARD: Senator Colantuono, I have two questions, if I may? I fail to understand your strong concern with local control when you just indicated near the end of your strong excellent presentation, that you didn't think there should be any local control in terms of the people deciding if they want these games or not, I am confused on your interpretation of local control.

SENATOR COLANTUONO: My point there was, we shouldn't allow a local ban. We should have local control that we have now under the law.

SENATOR DISNARD: Are you saying that the local citizens should not decide if they should have gambling or not?

SENATOR COLANTUONO: They don't have that power under the law . . .

SENATOR DISNARD: That is not my question, Senator. Will you answer my question please? Are you saying that the local people should not have any local control about gambling in their communities?

SENATOR COLANTUONO: They should have local control over it.

SENATOR DISNARD: Then you take . . .

SENATOR COLANTUONO: Not the power to ban it.

SENATOR DISNARD: Well, I guess I don't understand.

SENATOR COLANTUONO: They have the control in the form of a license fee and they have to get the license from the police department and they have to subject themselves to having police there at the premises.

SENATOR DISNARD: Will you look at page 11 and explain #20 to me, because I don't think that you understand me? I am saying this

in a polite way. I don't think that you understand. I read #20 as saying, and I was one of those who helped write this, I read #20 as saying: if a charity does not have a regular place to meet, they then may hold a Las Vegas or a charitable night on any premises that any charitable group owns. For example, the Knights of Columbus which you were very favorable of, in your community may have a hall, the boys hockey team may not have a place to meet in terms of a facility so they may hold that at the Knights of Columbus hall in your community. I strongly disagree with your statement in saying and trying to convince the Senators here that if an organization does not have a office or a premise, they cannot hold an event, that is not true, Senator.

SENATOR COLANTUONO: Well that is a matter of interpretation. It is not clear, I would say.

SENATOR MCLANE: I have a question of the Chair. I spoke to the amendment and it is the amendment on the floor and the speech by Senator Colantuono was to the original bill. So the parliamentary situation is that we are speaking of the amendment.

SENATOR DUPONT: The minority report is ought to pass with amendment and if the amendment is adopted then it will be on second reading at that time and opened to further amendment.

SENATOR HUMPHREY: I am speaking against the amendment and against the motion, Mr. President. Again, I was present at this very interesting hearing and members of the committee repeatedly asked the witnesses who were in favor of the bill, what are you trying to correct? Has there been any abuse, can you give us a case of any abuse, have any of the games been fixed, has there been any fraud, have these games attracted unsavory characters in the way of attendees or operators? The answer to those questions were no, no, no, no, no. There is no problem. Then what are we trying to fix if there is no problem? There is potential for problems, sure. There is a potential for a problem every time that you get out of bed, but if there is no problem, then let's not tie up our citizens in further government regulation. Now Senator McLane claimed with respect to this amendment that it would no way affect the earnings of charities. In fact, if you look at #22, it requires that all advertising for these games contain a certain notice to which notice an average of \$1 or less out of every \$5 spent on charitable gambling goes to the charitable purpose. That caveat is required to be included in all of the advertising. That is going to throw a wet blanket over these games, because people will look at that and say, my gosh, the operators are skimming \$4 out of every \$5. Well that isn't the case at all. Whether these games are run by the charities themselves, using there own

personnel and so on or whether they are run under contract, the overhead is pretty nearly the same. There is a substantial overhead in these games. Without a further explanation that rather narrowly worded caveat disclaimer, is going to create a lot of misunderstanding and, I think, substantially reduce the attendance at these games.

Committee amendment fails.

SENATOR COLANTUONO: I would urge the body to vote against the ought to pass motion.

SENATOR NELSON: I rise in opposition to the motion on the floor which is ought to pass. This is a bill that regulates the nonprofits. They want to put a 5 percent tax on the gross of the nonprofits, mind you. Now all of you have nonprofits in your area. We are talking the Girls Club, the Boys Club, we are talking your favorite organization, Senator Shaheen, the cats and dogs, the Humane Society. We are talking about all of those groups that everyone of us have probably served on as board of directors or have sent money to. This was a bill that was misdirected. There was a study committee and we commend this committee for studying all summer long, but I can tell you from the many groups that came up from Nashua, that they felt that their plea fell on deaf ears, that this committee had made a decision before the legislation was written. I could speak to you for 10 or 20 minutes about this bill, page by page and line by line, but I won't waste your time. But to tell you that Senator McLane is correct, we should have regulations on gambling. We shouldn't allow any of these people from other states with gold jewelry and mafia people and all of those in our state. But the way the bill is written, it really is against the nonprofits. I say to Senator McLane who worked herself very hard on this with Senator Disnard, get back to the table next year and regulate the businesses not the nonprofits.

SENATOR BLAISDELL: I want to go back to 1977 when Senator Podles and Senator McLane and I put in the bills to regulate bingo. I am glad, Senator Nelson, that you stood up and did defend Senator McLane. I think that what she is trying to do is to keep the word out there that we have to take a hard look at these places. I don't want to hurt the nonprofits, I don't want to hurt anyone, but I think that we ought to take a hard look at who comes in our state, who runs these monte carlos, to be sure that those nonprofits and those people that you talk about get their fair share. I'll not support it. I thought that we put in enough regulation in 1977 to be able to take care of this. I guess, let the word go forth that somebody is going to be looking. I think that is what they should be looking at, something like this, because even though those people didn't come into your committee and say that there are \$5 bets and \$10 bets and \$100 bets and more

than that, they wouldn't anyway, but I can assure you that they are there, so you better take a hard look at them and maybe heed her words. I will not support it. I am sorry, Senator McLane, but you are right to keep everybody on the dime.

Recess.

Out of recess.

### SUBSTITUTE MOTION

Senator Currier moved to postpone indefinitely for ought to pass.

SENATOR MCLANE: I think that we have a consensus, Senator Nelson and myself, that we do have a gambling reality and that the state of New Hampshire should be looking at that reality. To indefinitely postpone means that we could not bring up in any way, this subject within the year. I think we are agreed that if the motion is ought to pass on the bill itself, that this Senate, I can count, and we don't have the votes, but to indefinitely postpone it, I believe, is not in the long-term interest of this state.

SENATOR NELSON: I just wanted to say that I agree that my colleague worked hard, Senator McLane. That she looked into this issue, but I am suggesting that this is not the way that it be done. I am opposed to it. Now, if indefinitely postpone means that we don't bring it up this session, that is okay with me. Let them bring it up in the next session and put a mix on that committee of everybody here who has a different experience. I don't believe that there is a gambling element involved in monte carlo. If I in any way led anyone to believe that I believed that the mafia or someone like that is involved in this, I don't. I think that if your goal is to regulate gambling, regulate it, but don't drag all of these nonprofits out. I am for the motion of indefinitely postpone as long as we can take it up in the session, I mean the next biennium.

SENATOR DUPONT: Senator, there is nothing that we would be able to do here that would prevent this matter from being before the body again next session. Indefinite postponement would prevent the body from drafting and amending a bill that comes over from the House in another bill with the amendment being the same as what is before us or similar in subject matter, that is the difference.

The question before you is on the motion of indefinite postponement.

A division vote was requested.

Yeas 15

Nays 8

SB 465-FN-A is postponed indefinitely.

**SB 381**, an act relative to interest on escrow accounts. Banks committee. Ought to Pass with Amendment. Senator Fraser for the committee.

**4883L**

### **Amendment to SB 381**

Amend the bill by replacing all after the enacting clause with the following:

1 Interest on Escrow Accounts. Amend RSA 384:16-c to read as follows:

384:16-c Interest on Escrow Accounts. Any bank which requires or accepts moneys for deposit in escrow accounts maintained for the payment of taxes, insurance premiums or other expenses related to loans on property secured by real estate mortgages shall credit each such escrow account with interest at a rate of [not less than 5] 3-1/2 percent per year.

2 Escrow Accounts of Mortgage Companies. Amend RSA 384:16-e to read as follows:

384:16-e Escrow Accounts of Mortgage Companies. Any company which is in the business of or customarily makes loans for the purpose of financing the acquisition of single family homes and which is not subject to the requirements of RSA 384:16-c and which requires or accepts moneys for deposit in escrow accounts maintained for the payment of taxes, insurance premiums or other expenses related to loans on single family homes secured by real estate mortgages on property located in New Hampshire shall credit each such escrow account with interest at a rate of [not less than 5] 3-1/2 percent per year on all existing and future accounts.

3 Effective Date. This act shall take effect 60 days after its passage.

### **AMENDED ANALYSIS**

This bill requires banks and mortgage companies to pay interest on escrow accounts at a rate of 3-1/2 percent per year.

SENATOR FRASER: Before I address the bill I want to say that there is a floor amendment that is going to be offered.

SENATOR DUPONT: Senator Fraser, could we address the committee amendment first?

SENATOR FRASER: Initially, Mr. President, this was a bill that I introduced that would have under the current law today, requires banks to pay not less than 5 percent on escrow accounts because of the economic environment that we are currently living in, I had agreed to introduce a bill that would have reduced the 5 percent to 3-

1/2 percent. During the course of the public hearing, it was brought to the committees attention that the mortgage bankers who are governed by a different law, also had a problem in the same area, namely that they were required to pay 5 percent on all escrow accounts. What we did initially, was to draft an amendment which is contained on page four of the Senate calendar, but inadvertently, it was brought to my attention by Senator Colantuono that the 'not less than' had been deleted. So what the bill says today is that both mortgage bankers and savings banks, or those banks that have savings accounts will pay not less than 3-1/2 percent for escrow accounts. I will be happy to answer any question.

Committee amendment adopted.

SENATOR FRASER: Inadvertently, I have already addressed the content of the floor amendment. All that it does is put 3-1/2 percent on all escrow accounts, be them from the mortgage banks or from the savings banks. All that it says is that they must pay at least 3-1/2 percent on all escrow accounts.

Senator Fraser offered a floor amendment.

5074L

### **Floor Amendment to SB 381**

Amend the bill by replacing all after the enacting clause with the following:

1 Interest on Escrow Accounts. Amend RSA 384:16-c to read as follows:

384:16-c Interest on Escrow Accounts. Any bank which requires or accepts moneys for deposit in escrow accounts maintained for the payment of taxes, insurance premiums or other expenses related to loans on property secured by real estate mortgages shall credit each such escrow account with interest at a rate of not less than [5] 3-1/2 percent per year.

2 Escrow Accounts of Mortgage Companies. Amend RSA 384:16-e to read as follows:

384:16-e Escrow Accounts of Mortgage Companies. Any company which is in the business of or customarily makes loans for the purpose of financing the acquisition of single family homes and which is not subject to the requirements of RSA 384:16-c and which requires or accepts moneys for deposit in escrow accounts maintained for the payment of taxes, insurance premiums or other expenses related to loans on single family homes secured by real estate mortgages on property located in New Hampshire shall credit each such escrow account with interest at a rate of not less than [5] 3-1/2 percent per year on all existing and future accounts.



3 Effective Date. This act shall take effect 60 days after its passage.

### AMENDED ANALYSIS

This bill requires banks and mortgage companies to pay interest on escrow accounts at a rate of not less than 3-1/2 percent per year.

SENATOR NELSON: Senator Fraser, everytime that we want to change the interest we have to come to the legislature?

SENATOR FRASER: Yes. Both are covered by statute.

SENATOR NELSON: How did you arrive at 3-1/2 percent?

SENATOR FRASER: Because the current rates are anywhere from 4-1/2 to 3-1/2, Senator.

SENATOR NELSON: So you couldn't have left it at 4?

SENATOR FRASER: Sure, except that there were banks that are now only 3 and 3-1/2, so we put the floor amendment at 3-1/2 percent.

SENATOR NELSON: What is this doing for the small business person or the people from the state of New Hampshire, is this helping the banks or is it helping the people?

SENATOR FRASER: I think probably it would be helping the banks. It really helps both, because what we are trying to do is to initiate . . .

SENATOR NELSON: Thank you.

SENATOR HOLLINGWORTH: Senator Fraser, why are you lowering that amount, why is that interest rate being lowered?

SENATOR FRASER: Well as you know, even T-bills, they are not paying what they used to pay. All the rates of interest have dropped. What was happening is that the banks and the mortgage bankers were required to pay at least 5 percent. The mortgage bankers, it was set in concrete that they would pay 5 percent and the savings banks had a minimum of 5 percent that they had to pay, they couldn't pay less than that and because of the economic environment, we felt that this was appropriate to allow the banks to pay less. I might also add, that there are only 13 states in the country that require interest payments of escrow accounts. It is an archaic philosophy as it is, but the reason that we dropped it was because of banks owing the kind of money from their investments to pay more than 3-1/2 percent.

Recess.

Out of recess.

SENATOR FRASER: I would like to continue speaking on Senator Hollingworth's question. What we are talking about, Senator, is the

fact that the interest that the banks are charging on mortgages, for instance, has dropped so dramatically, that there has to be some spread between the 5 and 5-1/2 and 6 percent that they are charging for mortgages and what they are earning. That is the difference between what we consider to be a fair statement, a fair interest rate of 3-1/2 percent. Senator Hough also brought up the fact that why didn't we tie it to the savings bank. That was the original bill. Whatever they were paying on savings accounts is what we would pay for. The original language says that that would be the same amount that they would pay on escrow accounts, but it was the mortgage bankers that were required to pay 5 percent and they asked me to help them as well and that is why we had to come up with a quo of not less than 3-1/2 percent.

SENATOR HOLLINGWORTH: Senator Fraser, I am just not getting this. You said that it was because they are charging lower on the mortgages, but what if I have already established a mortgage and does this change my already established mortgage rate? Say I am paying 11 percent on my mortgage and I used to get 5 percent for interest on my money that I had to put into my escrow account. Now I am still going to pay my 11 percent, but I am only going to be getting 3-1/2 percent back?

SENATOR FRASER: I think that is a fair statement, Senator.

SENATOR HOLLINGWORTH: Are these the same people who have my credit card, who won't lower my credit card interest? Are these the same banks, are these the ones that are charging me 18 percent on my credit card even though the interest rates have gone down?

SENATOR FRASER: The people at this bank addresses the mortgage bankers and the savings bankers.

SENATOR HOLLINGWORTH: But do they give out credit cards?

SENATOR FRASER: Do they give out credit cards? Well the mortgage bankers don't, but I'm sure the savings bank do.

SENATOR HOLLINGWORTH: Thank you.

SENATOR NELSON: Senator Fraser, I just wanted you to address the second half of the bill, if you wouldn't mind. Specifically, it says, well I want to know what is 'in company which is not subject to the requirements of RSA 384:16-c, what is an example of that company? Second paragraph, section #2, fourth line down. 'Any company which is in the business or customarily makes loans for the purpose of financing the single family home in which is not subject to the requirements.' What would be an example?

SENATOR FRASER: Mortgage Bankers, Senator. Mortgage bankers have their own RSA and they are required to pay at least 5 percent. They don't take deposits, so whatever they pay out is built into their rate. All they are saying is that we would like to be on a level playing field with the savings banks.

SENATOR NELSON: Who is asking for this bill? Why are we putting this in?

SENATOR FRASER: The banks and the mortgage banks, both.

SENATOR NELSON: If we do this, how does this effect the single family homeowner on this second part of the bill?

SENATOR FRASER: Today if he has an escrow account and he is underwritten by a mortgage banker he is entitled to 5 percent. If he is underwritten by a savings bank he is entitled to not less than 5 percent.

SENATOR NELSON: You are not saying that in this, though, you are lumping them all together even though prior to this they were in different statutes. That is a little misleading to some extent in that it is not mentioning the savings. They are under another statute, is that what you are saying?

SENATOR FRASER: Exactly, yes. There are two statutes.

SENATOR NELSON: No, no, what about the savings? I am asking you. I said the question backwards, I was distracted. If I understood you correctly, Senator Fraser, what you are telling me is that if they are with a savings and loan, is that the word?

SENATOR FRASER: Savings bank. If you have a savings account, under current law, and you also have an escrow account, alright? The bank is required to pay you 5 percent, not less than 5 percent if it's a savings bank. If it's a mortgage banker, they must pay 5 percent.

SENATOR NELSON: Okay. Thank you.

SENATOR HUMPHREY: Senator Fraser, maybe I am the only one, but I still don't understand what is going on here. I have a hunch that it is important. The original bill, Senator Fraser used the terminology "5 percent a year", that is to say the new language . . . I gather that the current laws says that the interest has to be paid at a rate of not less than 5 percent per year, is that correct?

SENATOR FRASER: For banks.

SENATOR HUMPHREY: What about for . . .

SENATOR FRASER: Mortgage bankers is a separate law that says 5 percent period. Now the original bill that I introduced, tied the interest rate that banks would pay to the rate that they were paying their savings banks depositors.

SENATOR HUMPHREY: Right.

SENATOR FRASER: During the course of the public hearing, the mortgage bankers came to me and said "we have the same problem". So to get them on the level playing field, what I did is I came up arbitrarily with 3-1/2 percent that the bank would be required, a mortgage banker would have to pay on escrow accounts.

SENATOR HUMPHREY: Right. My question then is, why did you leave out in the amendment, the expression 'or not less than the rate paid on the regular savings accounts'. That seemed like good language to this Senator.

SENATOR FRASER: Sure. I agree, Senator, except that we were trying to address two distinct problems. Mortgage bankers who were not included in this division of the bill.

SENATOR HUMPHREY: Yes, I understand. Well, is there not some way to devise language for the mortgage bankers that somehow parallel that for the savings banks with respect to pegging it to something or the case of savings banks, the rate paid on its regular savings account. Is there not some way to pay some rate with respect to the mortgage bankers?

SENATOR FRASER: Senator, they don't take in deposits and that's where I wasn't able to accomplish anything similar to what I was trying to do originally for this bill for banks.

SENATOR HUMPHREY: I understand the problem, but it seems like it creates a problem for the rest of us who have to vote on this thing, because . . .

SENATOR PODLES: Senator Fraser, would you help me to understand, because I can't understand this. Do I understand correctly that the banks and also the mortgage company are now going to be paying 3-1/2 percent?

SENATOR FRASER: Right. If the amendment is adopted, the banks that maintain escrow accounts and mortgage bankers who maintain escrow accounts, both pay the depositor 3-1/2 percent.

SENATOR PODLES: Why are we reducing the banks from 5 to 3-1/2 percent?

SENATOR FRASER: Because interest rates have dropped so dramatically. They no longer earn the kind of money that they were making on the mortgages previously, but in the last two years, inter-

est rates continue to drop so in order to create some equity. They may be getting 5-1/2 percent on 6 percent of the mortgages today. What we are trying to do is to address the problem that the bankers are having in trying to maintain escrow accounts and paying through depositors, more than they are earning on their other accounts.

SENATOR PODLES: Isn't it true that some banks are paying 4 percent?

SENATOR FRASER: Oh, sure. Some banks are only paying 3-1/2, Senator, that is why we came up with this language.

SENATOR PODLES: Not less than 3-1/2 percent. But they can be paying 3-1/2 percent?

SENATOR FRASER: Yes.

SENATOR DELAHUNTY: Senator Fraser, in the present status quo, the banks are now paying the consumers on escrow accounts, what percent?

SENATOR FRASER: Not less than 5 percent.

SENATOR DELAHUNTY: So they are presently paying not less than 5 percent. How about the mortgage company?

SENATOR FRASER: Five percent.

SENATOR DELAHUNTY: Five percent. With the slides in the interest rates, your proposal is trying to bring that into line and to reduce the amount to 3-1/2 percent that they are required to pay. Is that scale work in reverse and is it a sliding scale so that it is tied into the rates so that if the rates go back up, will that interest rate go back up?

SENATOR FRASER: No, it can't. It is up to the banks. We put a floor in the banks committee where they have to pay not less than 3-1/2 percent.

SENATOR DELAHUNTY: Would you not be better tying that rate into some sort of a spread? I understand the rationale in what has got to be done, but maybe you could tie it into a spread that would exist between the primary rate or the prime rate, so that it slides back and forth so the consumers get the benefit of it when it does go back up?

SENATOR FRASER: Sure, as I said, Senator, this was an effort on my part, to not only address . . .

SENATOR DELAHUNTY: I understand what you are doing and I understand the need for it. I am just trying to help you out, because some questions were raised as to what the existing program was and

why the need for it. The need for it is because the cost to business has gone up for the banks with the interest rates going down.

SENATOR FRASER: Exactly.

SENATOR DELAHUNTY: I understand that, but when the rates turn around and go the other way, you want to protect the consumers so that they have a sliding scale so that it adjusts.

SENATOR FRASER: I am open to any ideas, but the whole idea of this is because of the fact that the rates are going down and the banks are having so much difficulty in earning money that we wanted to drop those rates that they had to pay to consumers that really today don't make much sense at 5 percent. But if you think that it is appropriate, I will have the bill recommitted.

SENATOR DELAHUNTY: I think that it just might give you a little more time.

SENATOR DISNARD: Senator Fraser, you know that I was against this, but I change my mind on what was presented at the hearings?

SENATOR FRASER: Yes.

SENATOR DISNARD: I heard that it was costing hundreds of thousands of dollars to the mortgage companies presently, and I don't know if you have those figures, plus the fact that I listened very closely when I heard that there is a strong possibility, and I believe them, that these mortgage companies could leave the state and do business in another state. That convinced me to vote your way. Perhaps you could help, I don't have my notes with me.

SENATOR FRASER: I didn't want to use that as a scare tactic, Senator, but that is absolutely the truth. What happens is that Commissioner Roberge spent a great deal of time testifying to the fact that what is happening is that a lot of the business, the mortgage business is seated to outside customers who are not regulated by the state of New Hampshire. Why the mortgage bankers were asking us to help them was because if the escrow account was low enough, the rate of the escrow account was low enough, it would be more attractive to keep the business in the state, because once they see that business to an out of state company, they don't regulate them all and those banks do not pay, those mortgage bankers do not pay interest on escrow accounts.

Senator Delahunt moved to have SB 381 an act relative to interest on escrow accounts laid on the table.

Adopted.

**LAID ON THE TABLE**

SB 381 an act relative to interest on escrow accounts is laid on the table.

**SB 372**, an act authorizing industrial development financing for the Manchester Airport. Economic Development committee. Ought to Pass with Amendment. Senator Fraser for the committee.

**5033L**

**Amendment to SB 372**

Amend the bill by replacing all after the enacting clause with the following:

1 State Guarantee for Interest on Bonds Issued in 1989 for Manchester Airport; Increasing Total Amount of Bonds. Amend 1989, 265:8 to read as follows:

265:8 State Guarantee. In view of the general public benefits expected to be derived from the projects to be financed under this act, and their contribution to the social and economic prosperity of the state, the governor and council may award an unconditional state guarantee of the principal of **and interest on** bonds issued under this act, notwithstanding the provisions of RSA 162-I:10. **In the case of bonds issued under this act**, the statement required by RSA 162-I:8, III and the finding required by RSA 162-I:9, II(b)(4) shall be modified to reflect the award of any state guarantee. The full faith and credit of the state shall be pledged for any such guarantees, but the total amount of the principal of bonds guaranteed by the state under this section shall not exceed [\$25,000,000] **\$50,000,000 and any interest thereon**. The governor, with the advice and consent of the council, is authorized to draw his warrant for such a sum out of any money in the treasury not otherwise appropriated, for the purpose of honoring any guarantee awarded under this section. The state's guarantee shall be evidenced on each guaranteed bond by an endorsement signed by the state treasurer in substantially the following form:

The state of New Hampshire hereby unconditionally guarantees the payment of the whole of the principal of **and interest on** the within bond and for the performance of such guarantee the full faith and credit of the state are pledged.

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State Treasurer

In connection with the award of a state guarantee, the governor and council may impose such terms and conditions as they may deem appropriate concerning the bonds, the use and operation of the airport facilities and the revenues therefrom, and reimbursement to the state if any state funds are used to honor the guarantee. Such

terms and conditions may be contained in an agreement between the state and the city, to be executed on behalf of the state by the governor and the state treasurer and on behalf of the city by the authorized officers.

2 Effective Date. This act shall take effect upon its passage.

### AMENDED ANALYSIS

This bill amends the 1989 authorization for the issuance of revenue bonds by the industrial development authority on behalf of the city of Manchester to finance capital improvements to the Manchester Airport. The bill increases the total amount of the principal of bonds guaranteed by the state from \$25,000,000 to \$50,000,000.

The bill also authorizes the governor and council to award a state guarantee of the principal of and interest on bonds issued under the 1989 authorization.

SENATOR FRASER: Mr. President, I really feel honored today to be able to bring to this body, SB 372, especially when we have the state treasurer, Georgie Thomas in here and Mayor Wieczorek in the gallery. This bill is probably the most important piece of legislation that I will do this year. Of all the things that we are going to do with economic development, I can't think of anything that is more important than SB 362. The bill was sponsored by Senator Podles, Senator Blaisdell, Senator Dupont, Senator Nelson, Senator Colantuono and several Representatives. We had an extended hearing in which both Mayor Wieczorek and the Director of the airport testified along with many, many people. What the bill does is it authorizes the Industrial Development Authority to issue bonds, \$50,000,000 for the expansion of the Manchester airport. It pledges the state's full faith and credit to guaranteed the bond issue, both the principal and the interest. The project to expand the Manchester airport began in 1987, but the original plan based on forecast prepared in 1986 had proven to be inadequate. The project will cost \$60,000,000 for a terminal facility, of the \$60,000,000 the federal aviation administration will pick up \$16,000,000 with grants and bonds, so the local share is \$44,000,000. Another \$15,000,000 will be spent on improvements to the airfield itself. All but \$2,000,000/\$3,000,000 of those cost will be bond by the federal government and the airport itself will finance the balance. The project has been accelerated and will be complete by December of 1993. This project will generate between 500 and 1,000 construction jobs, and once complete, about 350 permanent jobs. This is the most important essential addition to the transportation network in the state of New Hampshire. The terminal has been designed to allow for future expansion at reasonable cost. Although the estimate for traffic can serve as a future expansion is likely. The



terminal has eight gates instead of the original four to five. The parking areas have been expanded and the bigger roadways to and from the airport are planned. This is a vital project which will play a major role in the economic development of New Hampshire and we should be grateful that it has proved possible to accelerate this project to put people to work this year. Mr. President, I would urge that this bill be adopted immediately.

SENATOR HUMPHREY: Senator Fraser, my concern is not over the particular project, but over the system of the issuance of revenue bonds backed by the state. Is there any limit on how much the Industrial Development Authority may float in the way of bonds?

SENATOR FRASER: A limit?

SENATOR HUMPHREY: Yes.

SENATOR FRASER: Yes, I think there is. But I wouldn't know what the total is, Senator, certainly they have the capacity and I am sure that if they extend it beyond that capacity TAPE INAUDIBLE. This doesn't come anywhere near that capacity. I would assume without even knowing that there is some limit on capacity.

SENATOR HUMPHREY: Mr. President, am I allowed to ask a question of anyone who has an answer?

SENATOR DUPONT: I believe the limit is \$150,000,000 on tax free, but as to the taxable issues, I am not sure exactly what that is, Senator.

SENATOR HUMPHREY: Well, my question is, what is the total indebtedness so far of the Industrial Development Authority, statewide, and is there any limit on that indebtedness?

SENATOR DUPONT: On the IDA specifically?

SENATOR HUMPHREY: Yes.

SENATOR DUPONT: I don't believe that we have anyone from the IDA, but the state treasurer has gifted us with her presence and if you would like to come down onto the floor, Georgie Thomas, certainly we would see if she would be willing to respond to that.

I could also add, Senator Humphrey, that on IDA bonds, typically the guarantee on those will not be the state's good faith and credit, they will be dealt with by the person or company that is actually being issued for. In recent times we had a utility that went bankrupt after the issuance of some IDA bonds. In fact, the utility is on the hook and it will be settled in bankruptcy court, not on the basis of the good faith of the state.

It is a pleasure to have the state treasurer with us, Georgie Thomas. Maybe she can respond a little bit better than I have to that question.

SENATOR HUMPHREY: I thank the Chair. This particular issue is not backed by the faith and credit of the state of New Hampshire, is that correct?

STATE TREASURER: Yes it is, Senator.

SENATOR HUMPHREY: It is correct?

STATE TREASURER: It is correct that this would be backed by the full faith and credit of the state of New Hampshire.

SENATOR HUMPHREY: Oh, it is.

STATE TREASURER: Is it appropriate for me to speak here in this chamber?.

SENATOR DUPONT: Yes it is. Please go ahead.

STATE TREASURER: In dealing with the IDA, we are dealing with an entity that does TAPE INAUDIBLE. TAPE INAUDIBLE \$150,000,000 per capita and in the case of New Hampshire it is just slightly over \$150,000,000. That is a federal regulation, statewide there is no regulation per se, as to the amount of debt the IDA can issue. We are told by bond counsel, by saying we, I am saying the state bond counsel, the IDA's counsel and the TAPE INAUDIBLE, that this financing will not need that cap. I cannot give you the reason why it doesn't. To go back to the question of guarantee, the state of New Hampshire guarantees in different forms and different ways different kinds of debts. It guarantees for the sewer construction out there now and it guarantees up to \$250,000,000. It has up to \$75,000,000 principal and interest for school buildings. It does have outstanding \$25,000,000 guarantee on principal only for bonds for the construction of the new terminal at the Manchester airport. When this legislation first came up before the 1989 session, I was asked by, it started in the House matter of fact, I was asked by the various committees in the House to have the state's financial advisor take a look at it and see if it was doable and would it really threaten the state or take credit, because with more and more guarantees built there is somewhere and we don't TAPE INAUDIBLE. The result of the analysis that we have done and the figures that were provided by the consultants of the airport indicated that this is a stand-alone financing, ie., this financing can fly all by itself and can generate the revenues that will service the debt and allow it to be sold in the current marketplace. Bond and state guarantee. What they guarantee will enhance the sale of these bonds and will provide

a lower cost financing for the New Hampshire municipal airport. \$50,000,000, again, also looks like it is doable on the stand-alone deal and then some question that it might, in some cases rather, it may even be cost-effective not to use the guarantee, but to insure. That would depend upon the hard conditions at the time.

SENATOR HUMPHREY: I thank the Treasurer for her elusive explanations. Well that is my concern. At what point does borrowing and or guaranteeing begin to drive up the cost and begin to drive down the states bond rating? What is our total indebtedness now and what is our total indebtedness if you include guarantees?

STATE TREASURER: I don't have that with me, Senator, I would be giving you an off the top of my head answer. I can get it for you.

SENATOR HUMPHREY: Maybe the treasurer then can characterize in terms of what kind of reaction her office has gotten from the other bond raters with regard to where we stand and the rate in which we are adding to our debt and adding to our guarantees?

STATE TREASURER: They are fully aware of the system TAPE INAUDIBLE. Those are actually debt outstanding numbers that they are looking at and they characterize our total debt load TAPE INAUDIBLE. They do include the tax standing guarantee in our total debt load. I am sorry that I didn't mention that before, that is the potential debt fee TAPE INAUDIBLE. They do look at what is behind the debt, what are you issuing the debt for. That is one reason in talking about the Manchester airport, with the revenue base and the revenue TAPE INAUDIBLE that the financial advisor who is very careful to advise the state on the debt rating and making it safe. TAPE INAUDIBLE, therefore, even though it will be outstanding as a guarantee the likelihood of performing that guarantee, TAPE INAUDIBLE are small. I wish I could give you a percentage of answers to where that number is on the guarantee basis, but I think that there is and in the spectrum of guarantees does it fall and make a difference. When we look at the sewer and school debt we are looking also to municipal taxpayers, not just an MT out there who is issuing TAPE INAUDIBLE, although we do make appropriations TAPE INAUDIBLE for both sewer who are exactly based on their debt service.

SENATOR HUMPHREY: Thank you very much.

SENATOR HEATH: If for some change in the oil industry or in transportation regulation of something, the cash flow, the revenue flow at the airport authority wasn't sufficient to meet the debt, does the state immediately then, kick in its responsibility in the guarantee or does the city of Manchester kick in first and then if that defaults it then goes to the state's responsibility?

STATE TREASURER: These are questions that will be resolved as the financing occurs. TAPE INAUDIBLE one the important things that the bill provides for is that the terms and conditions of the guarantees TAPE INAUDIBLE.

SENATOR HEATH: If the state ends up having to back these, does the state then pick up authority over the operation so that it can operate it in the best manner to return the resource?

STATE TREASURER: That is a question that would have to be discussed TAPE INAUDIBLE.

Question is on the adoption of the committee amendment.

Committee amendment adopted.

### **SUSPENSION OF THE RULES**

Senator Russman moved that the rules of the Senate be so far suspended as to allow Senate Bill 372 to be on third reading and final passage at the present time.

**SB 372**, an act authorizing industrial development financing for the Manchester Airport.

Adopted.

### **Third Reading and Final Passage**

**SB 372**, an act authorizing industrial development financing for the Manchester Airport.

### **COMMITTEE REPORTS**

**SB 348**, an act establishing a committee to study the present and future needs of the correctional system. Executive Departments committee. Ought to Pass with Amendment. Senator Fraser for the committee.

**5025L**

### **Amendment to SB 348**

Amend section 2 of the bill by inserting after paragraph XV the following:

XVI. A representative of the New Hampshire State Employees Association, appointed by the association.

XVII. A former prisoner and parolee of the state prison who has completed his parole 3 or more years ago, appointed by the director of field services, department of corrections.

SENATOR FRASER: Mr. President, all that this bill does is set up a committee to study the present future needs of the correctional system. Everyone that testified at the public hearing supported such an idea. In the calendar is an amendment which adds two peo-

ple to the study committee. I believe one is representing the state employees association and the other is a former convict who has served his time and he has been squeaky clean for three years. I would urge that the bill be adopted.

Committee amendment adopted.

Ordered to third reading.

**SB 455-FN**, an act relative to the Pease development authority. Executive Departments committee. Ought to Pass. Senator J. King for the committee.

**SENATOR J. KING:** I think what I would like to have you do is to refer this to one of the many knowledgeable people about PDA.

**SENATOR COHEN:** I am glad to have this opportunity to talk very briefly about this bill. As you are all certainly aware that the heart of Pease is in my district here and my position has consistently been conservative pro business approach. The highest priority is to get Pease up and going. The purpose of this bill is to help reestablish public confidence which has taken quite a few blows throughout 1991. Public confidence has seen a crisis stage and I hope to also gain confidence of businesses which are thinking of locating at Pease and I hope to attract them to Pease. I would just briefly go through the bill. It requires approval by the affected municipality before expansion or contraction of an airport district, that is pretty self explanatory. It requires board members to file a financial disclosure statement. There have been a lot of questions raised by my constituents about possible conflicts of interest. I suspect there are no conflicts of interest, but this bill requiring members to reveal sources of income in excess of \$2,500 without specifying the amount of money made, can't help but increase public knowledge and confidence in those people serving on the Pease Development Authority. As one editorial said "we see no reason for those who will spend millions of our dollars, put precious few checks and balances to object to disclosing sources of significant income to put the public's mind at rest". Those directly responsible owe it to the people that they serve to end all thoughts and rumors of conflict of interest before actual development starts. So again, can help restore public confidence. It clarifies local jurisdiction with respect to land use controls and there has been a great deal of concern about land use control. This bill, unlike a House bill, would leave the airport district, leave the land use controls up to the Pease Development Authority for the airport district, so they would have that marketing advantage within the airport district. But as someone said, Pease is suppose to be the engine that drives the economic recovery of New Hampshire with-

out local land use controls. If there is just one stop shopping, Pease could end up being a gas guzzler that siphons the region dry, if you will. We need to make sure that Pease doesn't attract businesses to Pease to the detriment of the surrounding communities. So this bill would just require that the land that lies within Portsmouth and Newington would, before it gets developed, it would have to go through traditional land use controls, through the municipal process. Also, the final part is requiring that request for proposals be sent out. In the past there have been, with no bid contract. And again, that has undermined public confidence in Pease. They have been generally sending out requests for proposals now, this would simply codify that. People need to know what is going on with our money and I can't help but think that this bill will help get Pease up and going and get jobs at Pease and restore public confidence which is so very important here and I strongly urge its passage. Thank you.

SENATOR NELSON: Senator Cohen, I would just like to ask you a question referring to the bill on page 5, line 18 (c). It says "that in all instances the authority shall retain the power to make the final decision regarding applicability, interpretation, and enforcement of its land use controls, which shall require 5 affirmative votes." The first question is, how many members on the committee, how many members on the commission?

SENATOR COHEN: There are seven.

SENATOR NELSON: Now I would refer you down to the second part of the bill, (d), line 22 through two of page six. It says in c, "in all instances it shall retain the power to make the final decision", but then it says "any action of the authority in the exercise of its power under this section shall be subject to the motion and so forth to the towns of Portsmouth and Newington and any abutter shall have standing to appeal land use decisions made by the authority". So I didn't quite understand that the applicability interpretation and the enforcements of the land use control shall require five, and they will have authority to retain the power; but on the appeals? I don't quite understand how that is going to work, could you just tell us about that?

SENATOR NELSON: I am not certain that I understand your question.

SENATOR NELSON: Well how does C and D work? I am reading the bill in itself. I apologize, because it doesn't say on my paper that there is an amendment in the calendar.

SENATOR DUPONT: There is no amendment. The question before us is the ought to pass recommendation as offered by the committee.

SENATOR NELSON: It sounds as if, and you are the expert in this and I am not sure that I understand. It says that in C that "in all instances that the authority shall retain the power to make the final decisions regarding of applicability, interpretations, and enforcement of its land use controls, which shall require 5 affirmative votes", then if you go down to D, it says that "any action of the authority in the exercise of its power shall be subject to a motion for rehearing and appeal", and then something to do with the town of Portsmouth and Newington, and "any abutter shall have the standing to appeal land use decisions made by authority". This is a normal procedure that should be an appeal process? I don't know, maybe I am just reading it wrong?

SENATOR COHEN: I understand that that is a normal process. They, the PDA has the authority to make the final decision, but that is subject to appeal.

SENATOR NELSON: That is what that means?

SENATOR COHEN: Yes.

SENATOR NELSON: Even though no Senator from the southern tier appears on this bill, no Senator from the first largest city in the state or the second largest city in the state, no representative or anything, I just wanted to get a better handle on this in that you have referred to it, constantly and consistently referred to it, as a state project. Does this bill in any way make the process cumbersome? Is it putting so many road blocks in the way that by the time that you got through every one of those cities and towns you could actually come up with some kind of an agreement?

SENATOR COHEN: On the contrary, I believe, that this should help development, help speed it along and to help smooth it away and make it a better process.

SENATOR NELSON: I would like to say, Mr. President, that on the surface, I certainly support a bill that is coming out of Pease, but I would just like to make a point to my colleague, if we are going to continue to refer to this Pease Development as a major economic point for the state of New Hampshire, that perhaps some of us get a better handle on this and be included in on it, especially from the first and second largest city in the state.

Adopted.

Referred to Economic Development committee (Rule #24).

**SB 460-FN**, an act establishing a department of commerce. Executive Departments committee. Inexpedient to Legislate. Senator Fraser for the committee.

SENATOR FRASER: Mr. President, this is a very complex and difficult piece of legislation that was introduced by Senator Wayne King. All of the testimony addressing the bill was in opposition because for all intents and purposes dismantled the DES. So after deliberations in the committee yesterday morning, we opted to report the bill out as inexpedient to legislate. As you recall, Mr. President, this is the second time that we have recommitted to the committee out of deference for the new father. We brought the bill out today with the same report ie., that this bill should be reported out as inexpedient to legislate.

SENATOR W. KING: Thank you, Senator Fraser, for not referring to me as 'poor Senator Wayne King' as Senator McLane did. I am not going to try and overturn the committee report. I hope that the Economic Development committee will have discussion about whether or not we should create a task force to look at this issue, but I would like to say a few things about the Department of Resources and Economic Development. This is not DES. Senator Fraser, I think meant to say DRED and not DES. This is really about the Department of Resources and Economic Development. Now the Department of Resources and Economic Development, granted, is trying to do a great deal with very little in the way of personnel and funding, and I want to make that clear. There are six other agencies out there that are working on economic development issues that are all working in different areas and in a very uncoordinated way. The Department of Commerce bill was intended to get these other agencies working along with the Department of Resources and Economic Development under the Department of Commerce so that they would all be working in the same direction, that they would help with planning, they would help with the policymaking, all of the important things that lead to a strong, robust economic growth and that lead to developing a strategic plan so that we have a direction to our economic growth rather than a scattered shot approach. The Department of Resources and Economic Development has become nothing more than a glorified ad agency for the state of New Hampshire and in many ways we might as well just take the money that we give to them and give it to Pat Griffin and let him promote the state instead, we would probably get more bang for our buck. The Department of Resources and Economic Development participated in a trade show in Quebec recently and they didn't even take someone who knew how to speak French. I am not trying to be overly critical of the department, but I believe very sincerely, that they are not doing what they should be doing. There is no foresight capacity whatsoever. We find ourselves in this recession, we were totally unprepared for it, we had no idea that it was going to hit us. If we had



had the foresight capacity to begin with we could have at least made sure that we didn't stay in the recession so long and that the results weren't so difficult. Today, the only person who knows anything about banking, for example, at the Department of Resources and Economic Development is somebody who is loaned to them by a bank so that they could deal with the banking crisis in the state of New Hampshire. This bill here, what the real problem with this bill is, is that it is turf, that is what it is. Steve Rice actually got somebody from a ski resort that is on the FDIC's watch list that they are struggling so hard, to come in and say that tourism is doing great, thanks to the Department of Resources and Economic Development. We all know that when you deal with state agencies, most of the time there are plenty of people who are out to protect their turf. Now Steve Rice is a nice guy and taking shots at DRED and taking shots at Steve Rice is kind of like trying to hit a marshmallow. We have to do a lot better than we are doing. I would argue that we need to at least, at the very least, establish a task force in the state of New Hampshire that will look at all of the agencies, the Industrial Development Authority, the Port Authority, Pease, the Housing Finance Authority, the Department of Resources and Economic Development and get them working together so that we have the ability to plan for economic future.

Committee report of inexpedient to legislate is adopted.

**SB 385**, an act to provide insurance coverage for court-ordered psychiatric and psychological services. Insurance committee. Ought to Pass with Amendment. Senator Colantuono for the committee.

**4990L**

### **Amendment to SB 385**

Amend the bill by replacing all after the enacting clause with the following:

1 New Section; Prohibited Exclusions. Amend RSA 415 by inserting after section 6-a the following new section:

415:6-b Coverage of Certain Psychiatric and Psychological Services. No accident or health insurance policy issued, renewed or continued on or after January 1, 1993, shall contain any provision denying insurance benefits for psychiatric or psychological services, including psychological examinations, solely because they are rendered to an insured or a dependent in compliance with the lawful order of any court of this state. Benefits for such services shall be at least as favorable as for other psychiatric or psychological services, including psychological examinations, and shall be subject to the

same dollar limits, deductibles, co-payments and co-insurance factors and to terms and conditions of the policy or certificate, including any managed care provisions.

2 New Paragraph; Coverage of Certain Psychiatric and Psychological Services; Accident and Health Insurance. Amend RSA 415:18-a by inserting after paragraph VI the following new paragraph:

VII. No group policy or certificate subject to RSA 415:18-a issued, renewed or continued on or after January 1, 1993, shall contain any provision denying insurance benefits for psychiatric or psychological services, including psychological examinations, solely because they are rendered to an insured or a dependent in compliance with the lawful order of any court of this state. Benefits for such services shall be as favorable as for other psychiatric or psychological services, including psychological examinations, and shall be subject to the same dollar limits, deductibles, co-payments and co-insurance factors and to terms and conditions of the policy or certificate, including any managed care provisions.

3 New Paragraph; Coverage of Certain Psychiatric and Psychological Services; Hospital Service Corporations. Amend RSA 419:5-a by inserting after paragraph VII the following new paragraph:

VIII. No group policy or certificate subject to RSA 419:5-a issued, renewed or continued on or after January 1, 1993, shall contain any provision denying insurance benefits for psychiatric or psychological services, including psychological examinations, solely because they are rendered to an insured or a dependent in compliance with the lawful order of any court of this state. Benefits for such services shall be as favorable as for other psychiatric or psychological services, including psychological examinations, and shall be subject to the same dollar limits, deductibles, co-payments and co-insurance factors and to terms and conditions of the policy or certificate, including any managed care provisions.

4 New Paragraph; Coverage of Certain Psychiatric and Psychological Services; Medical Service Corporations. Amend RSA 420:5-a by inserting after paragraph V the following new paragraph:

VI. No group policy or certificate subject to RSA 420:5-a issued, renewed or continued on or after January 1, 1993, shall contain any provision denying insurance benefits for psychiatric or psychological services, including psychological examinations, solely because they are rendered to an insured or a dependent in compliance with the lawful order of any court of this state. Benefits for such services shall be as favorable as for other psychiatric or psychological services, including psychological examinations, and shall be subject to the same dollar limits, deductibles, co-payments and co-insurance factors and to terms and conditions of the policy or certificate, including any managed care provisions.

5 Coverage of Certain Psychiatric and Psychological Services; Health Maintenance Organizations. Amend RSA 420-B:8-b to read as follows:

420-B:8-b Health Maintenance Organization Benefits for Mental and Nervous Conditions.

**I.** Benefits for mental or nervous conditions shall conform to the requirements of RSA 415:18-a, III or alternatively with the basic health services requirements of the Health Maintenance Organization Act of 1973 (P.L. 93-222), any amendments, and federal regulations issued under the authority of such federal law. However, where a health maintenance organization provides these alternative benefits, such benefits shall not be subject to any deductible. The co-insurance required by the enrolled participant shall not exceed 20 percent of the reasonable and customary charge for the services provided.

**II.** No evidence of coverage, or amendment thereto, issued, renewed or continued on or after January 1, 1993, shall contain any provision denying insurance benefits for psychiatric or psychological services, including psychological examinations, solely because they are rendered to an insured or a dependent in compliance with the lawful order of any court of this state. Benefits for such services shall be as favorable as for other psychiatric or psychological services, including psychological examinations, and shall be subject to the same dollar limits, deductibles, co-payments and co-insurance factors and to terms and conditions of the policy or certificate, including any managed care provisions.

6 Effective Date. This act shall take effect January 1, 1993.

### AMENDED ANALYSIS

This bill prohibits health insurers from denying insurance benefits for psychiatric and psychological services solely because they are rendered in compliance with a court order.

SENATOR COLANTUONO: This bill was one of the bills that sort of peripherally came out of the rape study committee out of the summer because we discovered that there were companies that weren't paying for court ordered psychiatric care just simply because it was court ordered. So the bill was put in, and we had our hearing, and there is an amendment. The amendment is on page five which now constitutes the whole bill. What it basically says is that no company can fail to cover physiological exam and treatment solely because that treatment is ordered by a court. We thought that it was an

eminently reasonable change to make. The insurance industry supports it with the amendment, and we urge ought to pass as amended.

Committee amendment adopted.

Ordered to third reading.

**SB 402**, an act allowing mutual insurers to convert into stock insurance companies. Insurance committee. Ought to Pass with Amendment. Senator Delahunty for the committee.

**5009L**

### **Amendment to SB 402**

Amend the title of the bill by replacing it with the following:

#### **AN ACT**

allowing mutual insurers to convert into stock insurance companies,  
regulating business transacted with producer controlled  
property/casualty insurance, and making other  
changes in the insurance laws.

Amend the bill by replacing all after the enacting clause with the following:

1 Section Heading Changed; Annual Financial Statements. Amend the section heading of RSA 400-A:36 to read as follows:

400-A:36 [Reports and Replies] **Annual Financial Statement.**

2 Annual Financial Statement Required. Amend RSA 400-A:36, I to read as follows:

I. Every insurance company doing business in this state shall, on or before March 1 each year, make and transmit to the commissioner a statement under oath of its president and secretary, in accordance with [blanks approved by him and following those accounting procedures and practices prescribed by] the National Association of Insurance Commissioners [Accounting Practices and Procedure Manual,] **Annual Statement Blank following the National Association of Insurance Commissioners Annual Statement Instructions and those accounting procedures and practices prescribed by the National Association of Insurance Commissioners Accounting Practices and Procedure Manual**, showing the amount of its capital stock, assets, liabilities, outstanding risks, premium notes, receipts, expenditures, losses, assessments, salaries and emoluments, and any other information calculated to fully disclose the condition and method of management of the company for the year ending the preceding December 31, which statement shall in-

clude the whole amount of premiums written during the preceding year for insurance on property, or risks located or persons resident in this state.

3 Prohibited Acts. RSA 400-A:37, I is repealed and reenacted to read as follows:

I. The commissioner or any of his examiners may conduct an examination of any company as often as the commissioner deems appropriate but shall at a minimum, conduct an examination of every insurer licensed in this state at least once every 5 years. In scheduling and determining the nature, scope and frequency of the examinations, the commissioner shall consider the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent Certified Public Accountants and other criteria as set forth in the Examiners' Handbook in effect and adopted by the National Association of Insurance Commissioners.

(a) Except as otherwise expressly provided, the commissioner shall examine each domestic insurer at least once every 5 years, and he shall annually examine, value, or cause to be valued the reserve liabilities, including loss adjustment expense reserves, of each domestic insurer. For the purpose of making the annual valuation of the reserve liabilities for all outstanding life insurance policies and annuity and pure endowment contracts of domestic insurance companies, the commissioner may employ a competent actuary who shall make such valuation of a company's contractual obligations and the company's compliance with the law.

(b) For purposes of completing an examination of any company under this title, the commissioner may examine or investigate any person, or the business of any person, in so far as such examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the company.

(c) In lieu of an examination of any foreign or alien insurer licensed in this state, the commissioner may accept an examination report on the company as prepared by the insurance department for the company's state of domicile or port-of-entry state until January 1, 1994. Thereafter, such reports may only be accepted if:

(1) The insurance department was at the time of the examination accredited under the National Association of Insurance Commissioners' Financial Regulation Standards and Accreditation Program or

(2) The examination is performed under the supervision of an accredited insurance department or with the participation of one or more examiners who are employed by such an accredited state insurance department and who, after a review of the examination work

papers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department.

4 Conduct of Examinations. RSA 400-A:37, III is repealed and reenacted to read as follows:

III. Conduct of Examinations.

(a) Upon determining that an examination should be conducted, the commissioner or the commissioner's designee shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the Examiners' Handbook adopted by the National Association of Insurance Commissioners. The commissioner may also employ such other guidelines or procedures as the commissioner may deem appropriate.

(b) Every company or person from whom information is sought, its officers, directors and agents must provide to the examiners timely, convenient and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents and any or all computer or other recordings relating to the property, assets, business and affairs of the company being examined. The officers, directors, employees and agents of the company or person must facilitate the examination and aid in the examination so far as it is in their power to do so. The refusal of any company, by its officers, directors, employees or agents, to submit to examination or to comply with any reasonable written request of the examiners shall be grounds for suspension or refusal of, or nonrenewal of any license or authority held by the company to engage in an insurance or other business subject to the commissioner's jurisdiction.

(c) The commissioner or any of his examiners shall have the power to issue subpoenas, to administer oaths and to examine under oath any person as to any matter pertinent to the examination. Upon the failure or refusal of any person to obey a subpoena, the commissioner may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable as contempt of court.

(d) When making an examination under this title, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants or other professionals and specialists as examiners, the cost of which shall be borne by the company which is the subject of the examination.

(e) Nothing contained in this title shall be construed to limit the commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory action pursuant to

the insurance laws of this state. Findings of fact and conclusions made pursuant to any examination shall be prima facie evidence in any legal or regulatory action.

(f) Nothing contained in this title shall be construed to limit the commissioner's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or company workpapers or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action which the commissioner may, in his discretion, deem appropriate.

5 Examination Report; Filing, Adoption, Publication and Use. RSA 400-A:37, IV is repealed and reenacted to read as follows:

IV.(a) No later than 60 days following completion of the examination, the examiner in charge shall file with the department a verified written report of examination under oath. Upon receipt of the verified report, the department shall transmit the report to the company examined, together with a notice which shall afford the company examined not more than 30 days to make a written submission or rebuttal with respect to any matters contained in the examination report.

(b) Within 30 days of the period allowed for the receipt of written submissions or rebuttals, the commissioner shall fully consider and review the report, together with any written submissions or rebuttals, and any relevant portions of the examiner's workpapers and enter an order:

(1) Adopting the examination report as filed or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, regulation or prior order of the commissioner, the commissioner may order the company to take any action the commissioner considers necessary and appropriate to cure such violation; or

(2) Rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation or information, and refiling as provided in subparagraph (a); or

(3) Calling for an investigatory hearing with no less than 20 days notice to the company for purposes of obtaining additional documentation, data, information and testimony.

(c)(1) Upon the adoption of the examination report, the commissioner shall continue to hold the content of the examination report as private and confidential information for a period of 20 days except to the extent provided in subparagraph (a). Thereafter, the commissioner may open the report for public inspection so long as no court of competent jurisdiction has stayed its publication.

(2) Nothing contained in this title shall prevent or be construed as prohibiting the commissioner from disclosing the content of an examination report, preliminary examination report or results, or any matter relating thereto, to the insurance department of this or any other state or country, or to law enforcement officials of this or any other state agency of the federal government at any time, so long as such agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this title.

(3) In the event the commissioner determines that regulatory action is appropriate as a result of any examination, he may initiate any proceedings or actions as provided by law.

(d) All working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the commissioner or any other person in the course of any examination made under this title must be given confidential treatment and are not subject to subpoena and may not be made public by the commissioner or any other person, except to the extent provided in subparagraph (c). Access may also be granted to the National Association of Insurance Commissioners. Such parties shall agree in writing prior to receiving the information to provide to it the same confidential treatment as required by this section, unless the prior written consent of the company to which it pertains has been obtained.

6 Investment in Insurance Corporations; Domestic Insurers. Amend RSA 401-B:2, III(a) to read as follows:

(a) Any domestic insurer, other than a domestic life insurer, may invest, or otherwise acquire common stock, preferred stock, debt obligations, and other securities of one or more foreign or domestic insurance subsidiaries, in an amount which, together with its present holdings and with indirect or proportionate interest in such stocks held by it through any intermediate subsidiary or subsidiaries, shall not exceed the lesser of 10 percent of such insurer's assets or 50 percent of the surplus to policyholders of such acquiring insurer, **provided that after such investments, the insurer's surplus as regards policyholders shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.**

7 New Subparagraph; Requirements for Approval by Commissioner of Mergers or Acquisitions. Amend RSA 401-B:3, VI(a) by inserting after subparagraph (6) the following new subparagraph:

(7) The acquisition is likely to be hazardous or prejudicial to the insurance buying public.



8 Statutory References Added. Amend RSA 401-B:4, I to read as follows:

I. REGISTRATION. Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in [this section] **RSA 401-B:4 and 401-B:5**. Any insurer which is subject to registration under this section shall register within 60 days after the effective date of this chapter or 15 days after it becomes subject to registration, whichever is later, unless the commissioner for good cause shown extends the time for registration, and then within such extended time. The commissioner may require any authorized insurer which is a member of a holding company system which is not subject to registration under this section to furnish a copy of the registration statement or other information filed by such insurance company with the insurance regulatory authority of domiciliary jurisdiction.

9 Insurer Registration Information. Amend RSA 401-B:4, II(b) to read as follows:

(b) The identity **and relationship** of every member of the insurance holding company system;

10 Insurer Registration Information. Amend RSA 401-B:4, II(c)(6) to read as follows:

(6) Reinsurance agreements [covering all or substantially all of one or more lines of insurance of the ceding company];

11 Insurer Standards Within A Holding Company; Loans. Amend RSA 401-B:5, I(b)(2) to read as follows:

(2) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes such loans or extensions of credit with the agreement or understanding that the proceeds of such transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making such loans or extensions of credit provided such transactions are equal to or exceed[.];

(a) with respect to nonlife insurers, the lesser of 3 percent of the insurer's admitted assets or 25 percent **of surplus as regards policyholders**;

(b) **with respect to life insurers, 3 percent** of the insurer's admitted assets, each as of **the 31st day of** December [31], next preceding.

12 Section Heading Changed; Valuation of Securities. Amend the section heading of RSA 402:30 to read as follows:

402:30 Valuation of [Eligible Investments] **Securities**.

13 Reference Changed to Valuation of Securities. Amend RSA 402:30, I to read as follows:

I. [Investments] **Securities** held in accordance with the provisions of this subdivision shall be valued in accordance with the published valuation standards of the Securities Valuation Office of the National Association of Insurance Commissioners.

14 New Chapter; Business Transacted with Producer Controlled Property/Casualty Act. Amend RSA by inserting after chapter 402-F the following new chapter:

## **CHAPTER 402-G**

### **BUSINESS TRANSACTED WITH PRODUCER CONTROLLED PROPERTY/CASUALTY ACT**

402-G:1 Definitions. In this chapter:

I. "Accredited state" means a state in which the insurance department or regulatory agency has qualified as meeting the minimum financial regulatory standards promulgated and established from time to time by the National Association of Insurance Commissioners (NAIC).

II. "Control" or "controlled" means "control" as defined in RSA 401-B:1, III.

III. "Controlled insurer" means a licensed insurer which is controlled, directly or indirectly, by a producer.

IV. "Controlling producer" means a producer who, directly or indirectly, controls an insurer.

V. "Licensed insurer" or "insurer" means any person, firm, association, or corporation duly licensed to transact a property/casualty insurance business in this state. The following, among others, are not licensed insurers for the purposes of this chapter:

(a) All risk retention groups as defined in this Superfund Amendments Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) and the Risk Retention Act, 15 U.S.C. Section 3901 et seq. (1982 & Supp. 1986) and RSA 405-A;

(b) All residual market pools and joint underwriting authorities or associations; and

(c) All captive insurers which, for the purposes of this chapter, are insurance companies owned by another organization whose exclusive purpose is to insure risks of the parent organization and affiliated companies or, in the case of groups and associations, insurance organizations owned by the insureds whose exclusive purpose is to insure risks to member organizations or group members, or both, and their affiliates.

VI. "Producer" means an insurance broker or brokers or any other person, firm, association or corporation, when, for any compensation, commission or other thing of value, such person, firm, association or corporation acts or aids in any manner in soliciting, negotiating, or procuring the making of any insurance contract on behalf of an insured other than the person, firm, association, or corporation.

402-G:2 Applicability. This chapter shall apply to licensed insurers, as defined in RSA 402-G:1, V, either domiciled in this state or domiciled in a state that is not an accredited state having in effect a substantially similar law. All provisions of RSA 401-B, to the extent they are not superseded by this chapter, shall continue to apply to all parties within holding company systems subject to the chapter.

402-G:3 Minimum Standards; Required Contract Provisions.

I. Applicability of section:

(a) The provisions of this section shall apply if, in any calendar year, the aggregate amount of gross written premium on business placed with a controlled insurer by a controlling producer is equal to or greater than 5 percent of the admitted assets of the controlled insurer, as reported in the controlled insurer's quarterly statement filed as of September 30 of the prior year.

(b) Notwithstanding subparagraph I(a), the provisions of this section shall not apply if:

(1) The controlling producer:

(A) Places insurance only with the controlled insurer, or only with the controlled insurer and a member or members of the controlled insurer's holding company system, or the controlled insurer's parent, affiliate, or subsidiary and receives no compensation based upon the amount of premiums written in connection with such insurance; and

(B) Accepts insurance placements only from non-affiliated subproducers, and not directly from insureds; and

(2) The controlled insurer, except for insurance business written through a residual market facility, accepts insurance business only from a controlling producer, a producer controlled by the controlled insurer, or a producer that is a subsidiary of the controlled insurer.

II. A controlled insurer shall not accept business from a controlling producer and a controlling producer shall not place business with a controlled insurer unless there is a written contract between the controlling producer and the insurer specifying the responsibilities of each party, which contract has been approved by the board of directors of the insurer and contains the following minimum provisions:

(a) The controlled insurer may terminate the contract for cause, upon written notice to the controlling producer. The controlled insurer shall suspend the authority of the controlling producer to write business during the pendency of any dispute regarding the cause for the termination.

(b) The controlling producer shall render accounts to the controlled insurer detailing all material transactions, including information necessary to support all commissions, charges and other fees received by, or owing to, the controlling producer.

(c) The controlling producer shall remit all funds due under the terms of the contract to the controlled insurer on at least a monthly basis. The due date shall be fixed so that premiums or installments thereof collected shall be remitted no later than 90 days after the effective date of any policy placed with the controlled insurer under this contract.

(d) All funds collected for the controlled insurer's account shall be held by the controlling producer in a fiduciary capacity, in one or more appropriately identified bank accounts in banks that are members of the Federal Reserve System, in accordance with the provisions of the insurance law as applicable. However, funds of a controlling producer not required to be licensed in this state shall be maintained in compliance with the requirements of the controlling producer's domiciliary jurisdiction.

(e) The controlling producer shall maintain separately identifiable records of business written for the controlled insurer.

(f) The contract shall not be assigned in whole or in part by the controlling producer.

(g) The controlled insurer shall provide the controlling producer with its underwriting standards, rules and procedures, manuals setting forth the rates to be charged, and the conditions for the acceptance or rejection of risks. The controlling producer shall adhere to the standards, rules, procedures, rates, and conditions. The standards, rules, procedures, rates, and conditions shall be the same as those applicable to comparable business placed with the controlled insurer by a producer other than the controlling producer.

(h) The rates and terms of the controlling producer's commissions, charges, or other fees and the purposes for those charges or fees. The rates of the commissions, charges, and other fees shall be no greater than those applicable to comparable business placed with the controlled insurer by producers other than controlling producers. For purposes of this subparagraph and subparagraph II(a) of this section, examples of "comparable business" includes the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of business.

(i) If the contract provides that the controlling producer, on insurance business placed with the insurer, is to be compensated contingent upon the insurer's profits on that business, then such compensation shall not be determined and paid until at least 5 years after the premiums on liability insurance are earned and at least 1 year after the premiums are earned on any other insurance. In no event shall the commissions be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified pursuant to paragraph IV of this section.

(j) A limit on the controlling producer's writings in relation to the controlled insurer's surplus and total writings. The insurer may establish a different limit for each line or sub-line of business. The controlled insurer shall notify the controlling producer when the applicable limit is approached and shall not accept business from the controlling producer if the limit is reached. The controlling producer shall not place business with the controlled insurer if it has been notified by the controlled insurer that the limit has been reached.

(k) The controlling producer may negotiate but shall not bind reinsurance on behalf of the controlled insurer on business the controlling producer places with the controlled insurer, except that the controlling producer may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the controlled insurer contains underwriting guidelines including, for both reinsurance assumed, and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured and commission schedules.

III. Every controlled insurer shall have an audit committee of the board of directors composed of independent directors. The audit committee shall annually meet with management, the insurer's independent certified public accountants, and an independent casualty actuary or other independent loss reserve specialist acceptable to the commissioner to review the adequacy of the insurer's loss reserves.

IV. Reporting requirements are as follows:

(a) In addition to any other required loss reserve certification, the controlled insurer shall file annually, on April 1 of each year, with the commissioner an opinion of an independent casualty actuary, or such other independent loss reserve specialist acceptable to the commissioner, reporting loss ratios for each line of business written and attesting to the adequacy of loss reserves established for losses incurred and outstanding as of year-end, including incurred but not reported, on business placed by the producer; and

(b) The controlled insurer shall annually report to the commissioner the amount of commissions paid to the producer, the percentage such amount represents of the net premiums written, and

comparable amounts and percentage paid to noncontrolling producers for placements of the same kinds of insurance.

402-G:4 Disclosure. The producer, prior to the effective date of the policy, shall deliver written notice to the prospective insured disclosing the relationship between the producer and the controlled insurer, except that, if the business is placed through a subproducer who is not a controlling producer, the controlling producer shall retain in his records a signed commitment from the subproducer that the subproducer is aware of the relationship between the insurer and the producer and that the subproducer has or will notify the insured.

402-G:5 Penalties.

I.(a) If the commissioner believes that the controlling producer or any other person has not materially complied with this chapter, or any rule adopted or order issued under this chapter, after notice and opportunity to be heard, the commissioner may order the controlling producer to cease placing business with the controlled insurer; and

(b) If it was found that because of such material non-compliance that the controlled insurer or any policyholder thereof has suffered any loss or damage, the commissioner may maintain a civil action or intervene in an action brought by or on behalf of the insurer or policyholder for recovery of compensatory damages for the benefit of the insurer or policyholder or other appropriate relief.

II. If an order for liquidation or rehabilitation of the controlled insurer has been entered pursuant to RSA 402-C, and the receiver appointed under that order believes that the controlling producer or any other person has not materially complied with this chapter, or any rule adopted or order issued under this chapter, and the insurer suffered any loss or damage therefrom, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer.

III. Nothing contained in this section shall affect the right of the commissioner to impose any other penalties provided for in the insurance laws.

IV. Nothing contained in this section is intended to or shall in any manner alter or affect the rights of policyholders, claimants, creditors or other third parties.

15 New Chapter; Conversion of Mutual Insurers. Amend RSA by inserting after chapter 403-A the following new chapter:

## **CHAPTER 403-B**

### **CONVERSION OF MUTUAL INSURERS**

403-B:1 Application of Chapter. A mutual insurance company orga-

nized under the laws of this state, other than an assessment mutual, may convert into a stock insurance company upon compliance with the provisions of this chapter.

403-B:2 Definitions. In this chapter:

I. "Commissioner" means the insurance commissioner.

II. "Conversion value" means the amount of the insurer's policyholder surplus, determined in accordance with those accounting procedures and practices prescribed by the National Association of Insurance Commissioners and by the commissioner, brought current to the date of adoption by the board of directors of the plan of conversion.

III. "Eligible policyholder" means, with respect to a mutual fire or casualty insurance company, a policyholder of the insurer on the date of adoption of the plan of conversion by the board of directors pursuant to RSA 403-B:3, I or, with respect to a mutual life insurance company, such policyholders defined in the plan of conversion approved by the commissioner.

IV. "Net premiums" means gross premiums paid by a policyholder to the insurer, less return premiums and dividends paid.

403-B:3 Procedure for Conversion.

I. An insurer may apply to the commissioner for conversion pursuant to this chapter by filing with the commissioner a plan of conversion adopted by 2/3 of the entire board of directors, which shall contain the following:

(a) The proposed articles of incorporation and bylaws to be adopted by the insurer upon its conversion to a stock insurance company.

(b) A statement of the manner of treating holders of surplus notes, if any notes are outstanding.

(c) Provisions for distribution of the conversion value in accordance with RSA 403-B:4.

(d) Provisions stating the manner and basis of exchanging the equitable share of each eligible policyholder for securities of the stock insurance company into which the insurer is to be converted, and the disposition of any unclaimed shares.

(e) The effective date of the plan of conversion or the method of determination of such effective date.

(f) Such other information as the commissioner may reasonably require.

II. The commissioner may retain at the insurer's expense such attorneys, actuaries, accountants, appraisers and other experts as shall be reasonably necessary to assist in the review of the insurer's plan of conversion.

III. Within 60 days after receipt of the completed plan of conversion the commissioner shall hold a hearing, written notice of which shall be given to the insurer not less than 30 days in advance of the hearing. Within 15 days after receiving the notice of hearing, the insurer shall notify eligible policyholders. Notice of such hearing shall be made at the expense of the insurer by mail to eligible policyholders, which notice shall include a copy of the plan of conversion or a summary of such plan approved by the commissioner.

IV. At the hearing, the insurer and any eligible policyholders shall have the right to appear and to present evidence, orally and in writing.

V. Within 30 days after the conclusion of the hearing, the commissioner shall approve the plan of conversion, unless the commissioner finds:

(a) The plan of conversion is unfair or inequitable to policyholders;

(b) The plan of conversion will cause the insurer to become unable to fulfill its contractual obligations;

(c) After the conversion of the insurer the stock insurance company would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(d) The financial condition of the insurer would be such as might jeopardize the financial stability of the converted stock insurance company, or prejudice the interest of its policyholders;

(e) The competence, experience and integrity of those persons who would control the operation of the stock insurance company are such that it would not be in the interest of policyholders of the insurer and of the public to permit conversion; or

(f) The plan of conversion does not comply with the provisions of this chapter.

VI. Upon approval by the commissioner, the plan of conversion shall be submitted to a vote of eligible policyholders. The board of directors shall schedule a meeting to be held for such purpose, and shall provide at least 10 days' prior written notice to eligible policyholders. Notice to eligible policyholders shall contain a copy of the plan of conversion and such other information as the commissioner may require. The notice of such meeting may be sent prior to the commissioner's approval, provided the notice clearly states that the plan of conversion is subject to such approval. The vote of 2/3 of the eligible policyholders voting in person or by proxy shall be necessary for the adoption of the plan of conversion.

VII. At any time prior to the date of the vote of eligible policyholders, the plan of conversion may be withdrawn or amended by majority vote of the entire board of directors, except that no amend-



ment which materially changes the plan of conversion shall take effect unless such amendment is approved by the commissioner and eligible policyholders in accordance with the same conditions and procedures applicable to the original plan of conversion.

VIII. Upon adoption of the plan of conversion by the eligible policyholders, the commissioner shall certify his approval of the plan of conversion by an endorsement upon the articles of incorporation, which may then be recorded in accordance with the provisions of RSA 293-A, provided that copies of the original documents filed with the secretary of state shall also be filed with the commissioner.

403-B:4 Distribution of Conversion Value. The insurer shall follow the following conversion methodology:

I. Each eligible policyholder of a mutual fire or casualty insurance company shall have the right to purchase securities of the stock insurance company into which the insurer is to be converted, based upon such policyholder's proportionate amount of the conversion value determined by dividing the net premium paid by each eligible policyholder to the insurer with respect to the 3-year period immediately preceding the date of adoption of the resolution by the board of directors approving the plan of conversion by the total net premiums received by the insurer from eligible policyholders with respect to that period.

II. Each eligible policyholder of a mutual life insurance company shall have the right to purchase securities of the stock insurance company into which the insurer is to be converted based upon such policyholder's proportionate amount of the conversion value determinable under a fair formula approved by the commissioner.

III. The stock offering shall provide that eligible policyholders have the first right to purchase the stock at its stated value. Shares remaining unsold or not subscribed for may be offered to the general public, including, without limitation, the insurer's directors, officers, agents or employees, provided, however, that the price of shares offered to the general public shall be greater than or equal to the price of shares offered to eligible policyholders.

IV. The above distribution method shall constitute full payment and discharge of the policyholder's proportionate conversion value, but this provision shall not be held to prohibit the stock insurance company from including in the plan of conversion provisions for the distribution of any other valuable consideration to policyholders. Notwithstanding any other provision of law, the policyholders shall have no other rights with respect to the conversion of the insurer after the effective date of the conversion under this chapter.

403-B:5 Compensation. No director, officer or other employee of the insurer shall receive any fee, commission or other valuable consideration whatsoever, other than regular salary and compensation, for in any manner aiding, promoting or assisting in the conversion.

403-B:6 Issuance of New Certificate of Authority. After approval by the secretary of state of the articles of incorporation and certification by the insurer that the conversion has been effected, the commissioner shall issue a new certificate of authority to the insurer as a stock insurance company, effective as of the effective date of the conversion. The conversion shall be deemed to have been completed and the insurer shall become a domestic stock insurance company on such effective date, unless the plan of conversion shall have been terminated by the board of directors with the concurrence of the commissioner prior to such effective date. The stock insurance company shall be a continuation of the insurer and deemed to have been organized at the time the insurer was formed. The conversion shall not eliminate or change any of the insurer's rights and obligations existing prior to the date of conversion except as provided by this chapter. The stock insurance company, after conversion, shall exercise all the rights and powers and perform all the duties conferred or imposed by law upon insurers writing the classes of insurance written by it.

403-B:7 Officers and Directors. The directors and officers of the insurer shall serve until the directors and officers of the stock insurance company have been duly elected and qualified pursuant to the articles of incorporation and bylaws of the stock insurance company.

403-B:8 Judicial Review. Any person aggrieved by any order or decision of the commissioner pursuant to this chapter may appeal from such decision in accordance with the provisions of RSA 541.

403-B:9 Rules. The commissioner shall adopt rules, pursuant to RSA 541-A, as may be necessary for the administration of this chapter.

16 Domestic Ceding Insurer, Domicile Required. Amend the introductory paragraph of RSA 405:46, III(a) to read as follows:

III.(a) Credit shall be allowed when the reinsurance is ceded to an assuming insurer, including a U.S. branch of an alien insurer, which is [licensed] **domiciled** in a state which employs standards regarding credit for reinsurance substantially similar to those applicable under this section and the assuming insurer or U.S. branch of an alien assuming insurer:

17 Definition; Plan of Operation. Amend RSA 405-A:1, IX(f) to read as follows:

(f) identification of management, underwriting and claims procedures, marketing methods, managerial oversight methods, investment policies; and reinsurance agreements; [and]

**(g) disclosure of each state in which the risk retention group has obtained, or sought to obtain, a charter or license, and a description of its status in each state;**

[(g)](h) such other matters as may be prescribed by the commissioner of the state in which the risk retention group is chartered for liability insurance companies authorized by the insurance laws of that state.

18 Conjunction Changed. Amend RSA 405-A:7, III(b)(2) to read as follows:

(2) since October 27, 1986, purchased its insurance from an insurance carrier licensed in any state; [and] **or**

19 Risk Retention Groups or Purchasing Groups. Amend RSA 405-A:11 to read as follows:

IV. Every person, firm, association, or corporation licensed pursuant to the provisions of this title, [or] **on** business placed with risk retention groups or written through a purchasing group, shall inform each prospective insured of the provisions of the notice required by RSA 405-A:3, VII, in the case of a risk retention group, and RSA 405-A:8, II, in the case of a purchasing group.

20 New Section; Valuation of Securities. Amend RSA 411-A by inserting after section 36 the following new section:

411-A:36-a Valuation of Securities. Securities held in accordance with the provisions of this subdivision shall be valued in accordance with the published valuation standards of the Securities Valuation Office of the National Association of Insurance Commissioners.

21 Applicability. Controlled insurers and controlling producers who are not in compliance with RSA 402-G as inserted by section 14 of this act on its effective date shall have 60 days to come into compliance and shall comply with RSA 402-G:4 beginning with all policies written or renewed on or after 60 days after the effective date of this act.

22 Repeal. RSA 401-B:3, VIII(a), relative to exempting offers of any voting security, is repealed.

23 Effective Date. This act shall take effect January 1, 1993..

### AMENDED ANALYSIS

This bill allows mutual insurance companies organized under the laws of New Hampshire to convert into stock insurance companies.

The bill makes changes in the insurance laws required by the National Association of Insurance Commissioners.

This bill establishes a new chapter which regulates business transacted with producer controlled property/casualty insurance.

SENATOR DELAHUNTY: There are two parts to this bill; the first concerns demutualization of insurance companies and the second

part involves a number of changes to the insurance code which were proposed by the Insurance Department. Insurance companies are organized either as stock or mutual companies today. The modern trend is to do business as a stock company. The basic reason for that is that a stock company has easier access to capital. In other words, it is easier to raise money by means of stock offering (preferred or common) and issuance of bonds. Mutual companies are very limited in how they can raise money, and growth is much more difficult. New Hampshire currently has no law on the books which governs the process of converting a mutual insurance company to a stock company. If SB 402 is adopted, we would join a majority of states (38) have laws on the subject. This bill with the amendments, gives guidance to the Insurance Department in deciding whether or not to allow a conversion to go through. I emphasize that the department has broad authority under this bill to allow, disallow or require modification of any proposed conversion. There are other safeguards built in to make certain that conversion is fair to the public, including policyholders. For example, a vote of 2/3 of all policyholders who vote is required. In addition, a hearing must be held. Furthermore, no officer or director of the company can receive any payment, whatsoever, on account of the conversion, and they cannot be given any preferences in any stock offering. Finally, the policyholders have the same rights to a continuation of their insurance coverage after conversion as they had before. If this bill goes through, one or more New Hampshire based mutual insurance companies might decide to convert, if they did so the result could be a stronger company which contributes more to our state as an employer and taxpayer. In addition, passage of this bill might encourage out-of-state mutuals to consider moving to our state. The second part of this bill concerns amendments to several parts of the insurance laws. These amendments are designed to strengthen our laws, particularly in the area of solvency. The amendments would require additional financial information to be filed by insurance companies, and would give the department broader authority to examine companies. The amendments also restrict the operations of certain out-of-state companies which have caused problems in the past (companies which are controlled by insurance agents or brokers). The insurance amendments were proposed by the Insurance Department as necessary tools for them to continue to fulfill their responsibilities to regulate insurance companies. It is especially important that this legislation be enacted this session so that New Hampshire can be accredited by the National Association of Insurance Commissioners (NAIC). The NAIC accreditation process has been ongoing for two years now. It is hoped that, with adoption of these amendments, New Hampshire will meet all of the standards needed for accreditation, and that our

state can achieve NAIC accreditation this session. The committee vote was unanimous in favor of adoption of SB 402, as amended. There were questions raised, and I think there are questions that exist now, in the minds of some Senators that this might be a bail out bill. I have been assured and I thought that the committee was fairly well satisfied, this was not the case. The probability of a conversion is real and I understand that there is one company that may choose to convert if the legislation goes through. There was a problem with the lobbyist for the insurance companies, that existed between the lobbyist and the insurance companies and the commissioners office, that was resolved. I met with the commissioner and the deputy commissioner at length over the bail out situation and was satisfied that that was resolved, but I would certainly be able to table it if there is still concern.

SENATOR NELSON: Would it be possible for you to share with us a copy of the remarks that you read today, which really clarify a lot of what this might be doing?

SENATOR DELAHUNTY: I would be very happy to, Senator.

SENATOR NELSON: Senator Delahunt, I am going to start off backwards. I absolutely agree with you on the amendment starting a form of a bill, on the part of the amendment that starts on page 10.

SENATOR DELAHUNTY: The second part?

SENATOR NELSON: The second part of that amendment is necessary and I know the commissioner did testify and I think that it would be useful to the commissioner of insurance and our whole department. I guess my question deals directly with the amendment on page seven. Not the major portion of the bill, but just page seven to nine. If you would be kind enough to just clarify specifically, if this . . . let me begin my question. In pages seven through nine, does that include a different type of insurance carrier, if you will, one that is not a mutual fire and casualty, would that be different than the major part of the bill?

SENATOR DELAHUNTY: Senator, I don't think that I can answer that, but I would like to call upon Senator Fraser to see if he can help me out on that, I am not sure about the answer.

SENATOR FRASER: Senator Nelson, pages seven through nine have to do with the amendment that was asked for by the Insurance Department. Those are all of the changes in the laws that keep up to regulatory process.

SENATOR NELSON: Where is the amendment that Mr. George Roussos brought in then, let me be very specific? Page 12, oh, I am sorry, I made a mistake in that I had said page six. Here is my

question, Senator Fraser. I guess the question is this, if we look at this piece of legislation and we look at the title, it talks about the conversion, alright, of mutual fire and casualty. Does this amendment on page 12 deal with a different type of insurance company?

SENATOR FRASER: No. The original bill, Senator, was property and casualty companies . . .

SENATOR NELSON: I meant property, Senator.

SENATOR FRASER: And then the amendment, I believe, on page 12 or 13, somewhere in there it incorporates life companies as well.

SENATOR NELSON: Right.

SENATOR FRASER: That was not in the original bill.

SENATOR NELSON: I think that it would be helpful to some of the members if I may take the liberty of saying that, if you could just give us a clarification on what this would mean to the life insurance companies, because that is different than what the bill . . . and when you look at the bill you think the other . . . this amendment is different. Give us just a brief capsule of that, would you?

SENATOR FRASER: I think to simply put it, Senator, as you can see, starting on page 12 and continuing all the way through page 15, I believe, there is the ability, the capacity, to convert from the mutual to a stock company is clarified, when it comes to the life company, that was an addition. The format for doing such a process is not contained in the bill. In other words, there is nothing in here, it would all have to be done by rule.

SENATOR NELSON: So what you are saying, if I hear you correctly, that there is no legislation to deal with the life insurance converting?

SENATOR FRASER: That is a fair statement, Senator.

SENATOR NELSON: What we are doing is requiring legislation to deal with the conversion for the mutual, property and casualty, but we are leaving it to rules for the other company.

SENATOR FRASER: That is a fair statement.

SENATOR NELSON: Well, that is a great one. Thank you, Mr. President.

Committee amendment adopted.

Referred to Economic Development (Rule #24).

**SB 300**, an act reapportioning the New Hampshire congressional districts. Internal Affairs committee. Ought to Pass. Senator Disnard for the committee.

SENATOR DISNARD: The members of the committee, this is a very easy bill that was unanimously voted out ought to pass. I think that you should realize one of our criteria was the deviation of plus or minus one percent in the congressional district. Congressman Zelif has presented a plan, Congressman Swett's office presented a plan. Both Congressman Swett's office and Congressman Zelif's office both agreed to the plan as submitted by Congressman Zelif's office. I think that you will be very surprised to learn that with the recommendation of the committee, the deviation will be less than 1/10 of a percent. There will be 540,892 persons in district #2 and 554,360 in district #1. A change or a difference of 532 votes, people, so all the criteria was met. If anybody so desires, I will give them a copy of the information that came from Zelif's and Swett's office that they understood what the criteria was. If this passes by this Senate, we will probably have the smallest deviation of any state in the nation.

Recess.

Senator Currier in the Chair.

Adopted.

Ordered to third reading.

**SB 390**, an act establishing a revenue estimating conference which shall estimate anticipated state revenues. Internal Affairs committee. Ought to Pass. Senator Disnard for the committee.

Senator Disnard moved to have SB 390 an act establishing a revenue estimating conference which shall estimate anticipated state revenues laid on the table.

Adopted.

### LAID ON THE TABLE

**SB 390**, an act establishing a revenue estimating conference which shall estimate anticipated state revenues is laid on the table.

**SB 424-FN**, an act to prohibit the state from paying dues or other membership expenses for state employees. Internal Affairs committee. Inexpedient to Legislate. Senator Humphrey for the committee.

SENATOR HUMPHREY: If I may say, I am the author of the bill, Mr. President, and frankly, I don't know how it got this far, because I never signed off on this bill. I decided well before the sign off date that it was redundant and I didn't want to pursue it, but here it is and let's get rid of it.

Committee report of inexpedient to legislate is adopted.

**CACR 29**, an act Relating To: the governor's veto power. Providing That: the governor shall have line item reduction and line item veto power of items in any bill making appropriations of money. Internal Affairs committee. Inexpedient to Legislate. Senator Delahunty for the committee.

**SENATOR HUMPHREY:** I am representing Senator Delahunty for the committee, but I am also the author of the bill and I want to be recognized to make a motion of ought to pass.

Recess.

Out of recess.

**SENATOR DUPONT:** Mr. President, I was not present when this bill was heard, Senator Delahunty was to give the committee report. What I would like to do at the present time is allow Senator Humphrey who has made a substitute motion to speak. I think that there will be sufficient debate on this issue, which I intend to participate in, but given the fact that, I guess no one else is ready at this time to give the committee report, that I would suggest as a member of the committee that we just proceed ahead.

**SENATOR HUMPHREY:** Mr. President, I withdraw the motion that I made and I would now like to be recognized to make another motion?

**SENATOR CURRIER (In the Chair):** What is the motion, Senator?

### **SUBSTITUTE MOTION**

Senator Humphrey moved to substitute recommit for inexpedient to legislate.

**SENATOR HUMPHREY:** I want to move that the bill be recommitted to Internal Affairs. Mr. President, to begin with, this bill, this resolution was not drafted according to this Senators wishes. Indeed a whole section which I never requested was inserted into the bill without any consultation with me by the Legislative Service's Office. In my testimony before the committee, I urged the committee while execing the bill, when execing the bill, to remove that section, namely the first section, which I never requested, nor even dreamt about. I note on reading the bill now that the committee did not make any changes in it, and even I can't support it in this form; Therefore, I make the motion that we return it to the committee where I hope this time it will be amended as I requested and come back to the floor.

**SENATOR DUPONT:** Mr. President, I would just speak against the motion to recommit. As I understand, and I did even though I wasn't



present, have paid attention to this bill, as one legislator who has done a significant amount of work in the budget area over my legislative career and with great concerns about what we do to this citizen legislature and the ability of this citizen legislature to appropriate and put in place the policy issues that we think are important to us, with due respect to Senator Humphrey, his amendment was presented to the committee, it was in their possession and they made a determination that both the amendment and the bill did not have in their minds, the best interest of this legislature at hand, and made a recommendation to bring it out inexpedient to legislate based on that. So if the purpose of recommitment is to bring the amendment to the committee that they have already seen and have already determined that it was not appropriate, then I think that we would be in error in recommitting this bill and sending it back. I would speak strongly against the recommitment motion and urge my colleagues to vote down the recommit motion.

SENATOR COLANTUONO: Parliamentary inquiry: If Senator Humphrey's purpose at this point is to get the bill before this body in a manner in which he could support it, would another alternative be to either table it or make it a special order tomorrow and have a floor amendment prepared?

SENATOR CURRIER (In the Chair): That is correct.

Senator W. King moved to have CACR 29 an act Relating To: the governor's veto power. Providing That: the governor shall have line item reduction and line item veto power of items in any bill making appropriations of money laid on the table.

SENATOR HUMPHREY: Parliamentary inquiry: Is the tabling motion superior to a motion for a special order?

SENATOR CURRIER (In the Chair): Yes. The motion of laying on the table is the highest priority, Senator.

SENATOR HUMPHREY: Would the Senator mind modifying his motion? Well we are going to be in session tomorrow. I move to modify Senator King's motion to make it the pending business, as the first order of business tomorrow in tomorrow's legislative session.

Senator W. King withdrew his motion to have CACR 29 laid on the table.

Senator Humphrey moved to have CACR 29 an act Relating To: the governor's veto power. Providing That: the governor shall have line item reduction and line item veto power of items in any bill making appropriations of money made a Special Order for 1:01 p.m. on Thursday, February 20, 1992. tomorrow.

SENATOR HUMPHREY: Mr. President, I thank my colleagues for their cooperation.

Recess.

Out of recess.

Question is on the motion on making CACR 29 a special order.

Motion failed.

SENATOR COLANTUONO: Parliamentary inquiry: Is it the custom of the body that if a sponsoring Senator wants a floor amendment done, that the matter is deferred until Legislative Services can do a floor amendment before the bill is acted upon?

SENATOR CURRIER (In the Chair): That is generally the rule.

SENATOR COLANTUONO: How does one accomplish that in this particular case? Would it be the motion to defer?

SENATOR CURRIER (In the Chair): Well one way was to postpone until a time certain and the other one would be to table, but the motion has already failed.

SENATOR COLANTUONO: To postpone to a time certain?

SENATOR CURRIER (In the Chair): That is correct.

SENATOR COLANTUONO: What is the motion to put it off until later today?

Recess.

Out of recess.

Senator W. King moved to have CACR 29 an act Relating To: the governor's veto power. Providing That: the governor shall have line item reduction and line item veto power of items in any bill making appropriations of money laid on the table.

Recess.

Out of recess.

Adopted.

### **LAID ON THE TABLE**

CACR 29, an act Relating To: the governor's veto power. Providing That: the governor shall have line item reduction and line item veto power of items in any bill making appropriations of money is laid on the table.

CACR 31, an act Relating To: state spending. Providing That: the total amount of state expenditures shall be limited total general fund expenditures. Internal Affairs committee. Inexpedient to Legislate. Senator Disnard for the committee.

SENATOR DISNARD: The committee voted unanimously inexpedient to legislate. We request that the committee action be upheld.

### SUBSTITUTE MOTION

Senator Humphrey moved to substitute ought to pass for inexpedient to legislate.

SENATOR HUMPHREY: Ladies and gentlemen of the Senate, limiting the growth of government spending is the most difficult challenge facing any legislature. This is my opinion, because special interest who seek more spending are always better organized and more powerful than the general interest which is unorganized. Given this dynamic, there is a powerful tendency for government spending to grow and grow and grow. There is often a tendency for government spending to grow even faster than the economy, so that the government's share of economic output becomes proportionally greater with every passing year. When this happens the weight of taxes upon our citizens becomes heavier and heavier and government increasingly becomes the master and the taxpayer the servant. The government spending under these circumstances crowds out private investment, private sector, productivity stagnates and our standard of living falls. Thus it is clear that the growth in government spending must not exceed the growth in the economy. Mr. President, 20 states have enacted tax and expenditure limitations as a way of controlling the growth of government spending. I respectfully suggest to my colleagues, that it is time for New Hampshire to do the same thing. I would ask you especially to pay attention to this: had government spending, growth, that is general fund spending growth, been restrained during the boom years of the 1980's, when I am sorry to say and somewhat ashamed to say, my party failed to do so in this state. Had such spending been restrained in the boom years, spending levels today would be lower and the tax burden would be lighter, the economy would be stronger and the fiscal crisis less severe. I am confident, Mr. President, that good times will return again to New Hampshire. The economy will recover, this economy will recover from this recession as it has recovered from all previous recessions. Now, I suggest, is the time to create a fiscal break on the growth of spending so that during the next up cycle, we can be assured that the private sector will grow faster than government spending. The purpose of CACR 31 is to put in place an institutional limit on growth of expenditures from the general fund. Specifically the resolution proposes an amendment to the New Hampshire constitution that would limit the annual growth in general fund expenditures to the previous years growth in state personal income as defined by the U.S. Department of Commerce.

In case of an emergency, the spending limit can be waived. If the governor declares such an emergency, and by a roll call vote of 2/3 of each house, concur. Mr. President, had our constitution contained such a provision during the last decade, it would have prevented a number of spending binges such as in fiscal years 1986 and 1987 when general fund spending grew by 17 and 21 percent respectively, far out-stripping the 11 percent growth in state personal income in 1985 and 1986. Our state's economy is undergoing a painful and fundamental change. It is unlikely that we will ever see the levels of defense spending and defense related employment that we enjoyed in the 1980's. Competition in the computer and the hi-tech industries will become keener as the hardware components become increasingly cheaper commodities. If we are to preserve and expand our employment base and if we are to successfully compete with other states in attracting new businesses, at all cost, we must preserve New Hampshire as a state with a low per capita tax burden. As I see it, the formula is simple, low spending means low taxes, low taxes means capital formation, means jobs creation, jobs creation means opportunity for our people to better themselves and their families. Now is the time, I suggest, during the recession to proclaim loudly and clearly that we are determined that New Hampshire will remain a low tax state. Now is the time to proclaim that New Hampshire will remain a friendly and profitable place to business. Now is the time to proclaim that New Hampshire is a state that creates employees by creating employers to borrow a phrase from Jack Kemp, "Now is the time to proclaim that our state wants jobs and will create jobs by beating out the competition from other states", but rhetoric alone is not enough, therefore, I respectfully suggest to this Senate that now is the time to put in place an institutional restraint on spending growth. Now is the time to enact CACR 31 and send this proposal to the voters for inclusion on the ballot in November. I thank the Chair.

Recess.

Out of recess.

SENATOR HOLLINGWORTH: Senator Humphrey, I heard a very interesting statistic the other day and I was wondering if you might be aware of it or not. I heard that North Dakota and South Dakota and Vermont, are the only other states that have a budget that is equal to or anywhere near New Hampshire's. Had you heard that?

SENATOR HUMPHREY: I don't understand the question.

SENATOR HOLLINGWORTH: Well you were talking about the amount spent on state government and I am just asking you, are you

aware that those three states are the only other states that have a budget somewhere near New Hampshire's and that in fact, Vermont has half the population?

SENATOR HUMPHREY: The answer is, I don't know, but I would point out that 20 states have enacted tax and spending limitations such as the one which I am proposing.

SENATOR HOLLINGWORTH: Are you aware, Senator Humphrey, that we have over the past years, stripped the budget to the absolute bone that we can and that what we pay for is only the necessities that we have too?

SENATOR HUMPHREY: Well that is a debatable point, but in general I would agree that some of our budgets in some years have been austere. I agree with that, but in some years, there have been spending binges, Senator Hollingworth, and that is the excess to which this measure is aimed. For example, in fiscal years 86 and 87, when we were fat, dumb and happy, we Republicans, general fund expenditures increased 17 percent and 21 percent respectably, while the growth and state personal income was about 11 percent according to the Commerce Department. So in fact, out of the last ten years, perhaps in only two or three years with this measure, have had an effect, but it would have had a very important effect, and that is my point.

Senator Cohen moved to have CACR 31 an act Relating To: state spending. Providing That: the total amount of state expenditures shall be limited total general fund expenditures laid on the table.

Question is on the tabling motion.

A 3/5 vote is required.

A roll call was requested by Senator Humphrey.

Seconded by Senator Nelson.

Recess.

Out of recess.

The following Senators voted yes: Oleson, W. King, Fraser, Hough, Dupont, Disnard, Blaisdell, Bass, Pressly, Nelson, McLane, J. King, Russman, Shaheen, Delahunty, Hollingworth, Cohen.

The following Senators voted no: Heath, Roberge, Colantuono, Poldes, Humphrey.

Yeas 17

Nays 5

A 3/5 vote was acquired.

**LAI D ON THE TABLE**

CACR 31 an act Relating To: state spending. Providing That: the total amount of state expenditures shall be limited total general fund expenditures is laid on the table.

**CACR 32**, relating to biennial legislative session. Internal Affairs committee. Ought to Pass. Senator Roberge for the committee.

**SENATOR ROBERGE**: CACR 32 relating to biennial legislative sessions passed the committee on internal affairs, and I would ask that the body pass this piece of legislation.

**SENATOR HUMPHREY**: I would like to rise to speak to my bill, in favor of the motion. I feel like a traveling salesman, I have six bills on the calendar here, there must be something that almost everyone will like. Even the committee likes this one. Well, ladies and gentlemen, CACR 32 calls for a return to biennial sessions of this honorable general court. One of the great virtues of our state legislature. One of the few virtues, may I say, is but that it has our great, is that it is truly a citizen legislature. Unlike so many other states, New Hampshire is not burdened with professional legislators. May it ever be so. May we ever have a nonprofessional citizen legislature. I have seen them both by the way, this is better. Unfortunately, the advent of annual sessions of this legislature has made it more difficult for many citizens to serve. I do wish that my colleagues would take this seriously, because it is serious. However diverse may be the membership of the general court, one thing that we all have in common is that our lives are very busy when we are in session. It is a mathematical fact of life that while we are in session that we have less time for our families, less time to earn a living for those of us for whom that is a necessity. Some of our citizens, those who are retired and those who are wealthy, probably find no difficulty with annual sessions and we are fortunate to have the services of many who fit that description. Yet one of the virtues of a citizen legislature is its diversity. So permit me to point out that most of our citizens are neither retired or wealthy. Many such citizens have an interest in serving in the legislature, but when they weigh the demands of annual sessions versus biennial sessions, they choose not to run. Likewise, some who are elected and serve, choose not to run again, because they find the demands of annual sessions and the necessary absences from their place of work to be more than their family finances can bear. Think about that and think about those who have not run and those who have departed this institution. Both houses are under a financial cloud because of the extraordinary demands upon our times caused by annual sessions. There have been some very great personal tragedies if we think back just a year or two. So this is a very serious

matter, one that I suggest that we address and must address if we are to preserve this body as a citizen legislature with a diverse membership where one can serve even if one is not wealthy or retired. There is a second major reason that we ought to return to biennial sessions, may I suggest. I don't have to tell my colleagues. There is a natural tendency of government to grow and to grow and to grow and there is a related tendency of legislators to legislate and legislate and legislate. We are after all, busybodies or we wouldn't be in this business. Politicians like to arrange other peoples lives. It is this tendency to do too much that gives rise to the ancient sentiment that "no man's life or property is safe when the legislature is in session", and so this, too is a serious matter. I think from the point of view of most of our citizens, the less often the legislature meets, the better, the more often the legislature meets, the more bills are introduced and the statistics bear this out. As you know, annual sessions began in 1985 and it is instructive to look at the statistics, both before and after 1985 with respect to the number of bills introduced. In the 1981/82 biennium, prior to annual sessions, there were 1,381 bills introduced. In the next biennium, 1983/84, there was 1,109 and then came annual sessions in 1985, and in the 1985/1986 biennium, 1,744 bills were introduced. The two previous bienniums under biennial sessions, the average was 1,200 bills per biennium. In the first biennium following the advent of annual sessions, that shot up to 1,700 bills. The next biennium, 1987/88, it was 1,606, the next one it was 1,578 and this biennium is 1,441. If you use the 1983/84 period, the last biennium in which we met only one year as the bench mark, the number of bills introduced rose by 57 percent, in the next biennium 45 percent, and the next 42 and then 30 percent in the following two bienniums. So that even in the most restrained biennium, the number of bills was up 42 percent over the last biennium during which we met annually. Now there is proof positive in the statistics that annual sessions result in more bills. Kindly recall if you will, that each bill cost an average \$1,200 if you factor in all of the cost of the researchers and the drafters and everyone else who is employed. Of course that is a small part of it. The cost of the mechanical cost of getting the bills before us, and enacted or turned down is a small part, the actual cost in greater state expenditures is impossible to estimate, but I think that we all know that it is very great. Thus, for these two very important reasons, I urge the committee, that is the body, to support the pending motion of ought to pass. One, to preserve this as a citizen legislature in which those who aren't wealthy and or retired may serve. Second, to put a brake on the growth of government and the growth of taxes and the burden upon our citi-

zens. I urge the Senate to support the pending motion and to put this question before the voters in November. I thank my colleagues for their attention.

SENATOR HOUGH: I will rise this year as I have risen every year since I have been in this legislature to oppose going back to biennial sessions and support annual sessions. The reality in spite of what Senator Humphrey has just told you, if you were to look over the history of the last 20 or 30 years, this legislature will meet on the even year. It will meet in special session. I remember in the mid 70's when we met on the first day of July, we didn't have a budget. By the time that we got to November, I think that we were running three special sessions in tandem. If you think that that was interesting, you would find that there hasn't been a two year period, with the exception of one time during the Gallen administration when we had two recall days and the legislature was able to have work days to be compensated during the spring of that year. So in effect, the legislature meets when it is necessary for the legislature to meet. The budgets that we have been entertaining over the last number of years are biennial budgets. They are a clear recognition that we can budget over a two year period, but they call for the demand of an annual budget adjustment act. You can submit this constitutional amendment back to the people. The people clearly understand the reality of the situation, but the legislature will be meeting every year regardless of whether we have a biennial or an annual session of the legislature. These arguments appear on an annual basis, the subject is raised on an annual basis, but the reality is that we will be meeting every year as we have met in modern history in New Hampshire. I think that the significant thing is that we have a framework in our budget bill that spans two years. There is a lot of merit in setting your budget spending plan for a two year period, but you do need the flexibility to make the annual adjustments. Last week we made a two or three month adjustment and we will be making a further budget adjustment for the balance of this fiscal year and we will be adjusting our spending plan for you, FY 93. Clearly if you have had a sense of service in this legislature you know that it is necessary. It isn't a question of legislating, legislating, legislating, and I for one am sick of seeing the same bills on abortion and related subjects that appear on an annual basis. But the facts are that they are submitted and we must dispose of them. Senator Bass and I have worked over the years on rules and I will tell you one way to make the legislature operate more efficiently, but you don't have the will to past rules to allow that to happen. If policy committees were responsible and solely responsible for the drafting of legislation in their jurisdiction you would find that you wouldn't have the prolifer-



ation of bills that each and everyone of us holds sacred the opportunity to be able to file a bill on behalf of a constituent or file a bill on behalf of an ill conceived and failed idea, and so we have 200 subject matters that we must entertain. But I daresay, be it the committee on Education, the committee on Environment or any other of the standing committees, if they had the responsibility for drafting the important legislation and brought forward bills from the committee, half of our work load would be eliminated. The secret and the success of us meeting annually has also been demonstrated in recent history. It was June 30/31, late in the morning in 1986 our first experience and we concluded our second year of the biennium or the first experiment with annual sessions. We had a two year budget in place, but we couldn't resolve our differences. In 1988 I think that you will find that we adjourned between the 15th and the 20th of May, in 1990 we were closer to the first of May; hopefully, we can discipline ourselves to get out of here on or about the first of May. Strict enforcement of the rules, strict self-discipline . . . that was an interruption, Roger, and you give me the impetuous to forge on, but seriously, I will conclude, I will conclude and since you announced that you are not going to be with us in the next biennium, you have turned into a more and more pleasant individual. So I will conclude by saying this: there are methods and there are ways that this legislature can be more responsible at, there are many solutions, but it takes the will of this body through their Rules committee, such as allowing committees to draft legislation, such as setting more tight time frames, but the need will not go away. We can go back to biennial sessions, but we will be meeting on the even years or the second year in every biennium in special sessions, we will be meeting in emergency special sessions. We met last November at the call of the Governor under a recall day. These things will happen in an ever increasing time frame and we will be forced to be back here. I am against this and I will continue to be against this. It is up to this body and our colleagues on the other side of the wall to make the legislature operate more efficiently and more effectively.

SENATOR HEATH: Senator Hough, at the risk of being here way beyond May 1st, I will ask this question. You used the adjustment when you were talking about the annual sessions that we have had coming back and revisiting the budget and making adjustments. Now I have a motorcycle that has a needle valve and you can go to rich to lean and I have a radio that you can move the volume way up and way down. Now that to me is an adjustment, but can you tell me, if ever, in the history of annual sessions, the adjustment on the budget has it ever been downed?

SENATOR HOUGH: The annual budget adjustment act, historically, has always faced the pressing needs of the people of the state of New Hampshire and has allowed the legislature to adjust its budget in a way that is most beneficial to the people who are most concerned about.

SENATOR HEATH: Senator Hough, would you tell me from your personal experience if you have ever seen the amount of money spent in the budget adjustment less than the annual biennial budget that was set in the first session?

SENATOR HOUGH: You make the assumption. In answer to your question that the budget vehicle and the annual budget adjustment act spends money irregardless of recognition of need. The New Hampshire budget historically, has always been a very frugal and conservative document, and our tendency not to recognize our needs realistically forces us in a position of making supplemental appropriations more often than not.

SENATOR HEATH: Senator Hough, I am pursuing the answer to my question. Have you ever seen a budget adjustment for the second session adjust the amount of spending downward?

SENATOR HOUGH: I will tell you this, if you are serious in your question . . .

SENATOR HEATH: I am.

SENATOR HOUGH: There have been instances, but by line there have been adjustments downward. There are more likely than not, the bottom line is impossible, because you are always in a deficient budgeting mode when you start and you know it as well as I do, Roger.

SENATOR HEATH: Thank you. I just wanted to hear you say it.

SENATOR BASS: Mr. President, I rise in opposition to the pending motion of ought to pass. I would like to make a couple of points. My distinguished colleague from district #17 defends the position of going back to biennial sessions by saying that the legislature tends to attract wealthy, retired housewives and so forth and that biennial sessions has exacerbated this problem. There is no evidence to indicate that this is exactly what has happened. The demographics of the legislature hasn't really changed at all since 1984. He mentions that the turnover has increased. Well turnover hasn't increased since the implementation of biennial sessions. It has always been about a third in the House every two years, the Senate has remained about the same. He also mentioned the problem of the legislature legislating, legislating, legislating. Well, I greatly respect my colleague from

district #17, but he is one of the greatest beneficiaries of annual sessions, because it is he who has introduced more legislation this year that is identical to the same legislation that he introduced last year. And if it wasn't for annual sessions, he wouldn't have this platform this year in which to discuss all of these issues. So he really owes those of us who have helped to maintain annual sessions a great debt of gratitude. The fact is, that we had biennial sessions for roughly 100 years and then prior to that we had annual sessions. It took a while for the legislature to adjust to biennial sessions. It is going to take the legislature a while to adjust to annual sessions. I feel that after this resolution has been defeated, because it has been defeated already in the House, so we know what is going to happen to it, that the Senate leadership and the House leadership establish a task force to really look at the issue of annual versus biennial session. Now Senator Hough has brought up a couple of very interesting concepts which ought to be considered. I have been reiterating my ideas of annual session until nobody wants to listen anymore and that is what we really ought to do, is look at a biennium as one year and in the first year we ought to consider the budget and in the second year, we ought to consider policy matters. We ought to be able to suspend the rules in the first year to consider policy matters if they are of an emergency nature. In the second year, suspend the rules and consider budgetary changes if they are of an emergency nature. These are the kinds of concepts that would make the legislature operate efficiently. It would not take up substantially more time, would give new members of the legislature the opportunity to learn the system before they introduce all this legislation which I agree is over done. What we really have now and have had since 1984 is biennial sessions annually. That is certainly not what the voters had in mind. Eventually, in my opinion, those individuals who make rules, with respect to the process here, will realize that annual sessions are simply not going to be turned down. We can make this system work so that government is flexible, not extravagant, that good legislation is introduced, a lot less legislation is introduced, but we need to get to that task and stop returning over and over and over again to this concept to going back to biennial sessions, which is essentially similar to holding our head in the sand. So I urge the Senate to put an end to this issue and let's get going and make annual sessions really work.

SENATOR DUPONT: It is a pleasure to be on the floor and to be able to ask a question of my colleague.

SENATOR BASS: It is a pleasure to be asked a question by you, Senator Dupont.

SENATOR DUPONT: Would you believe, Senator, and I don't usually do would you believe questions, that as the President of the Senate, I have explored some of your recommendations that you have been making concerning allowing us to limit bills in the first session? Would you also believe that we had that dialogue with the House and as you know you mentioned in your speech that the House isn't real receptive to either returning to annual sessions or limiting the amount of legislation that can come in?

SENATOR BASS: Well, Mr. President, I would answer that question by saying that as Senator Hough has said in his speech, it is going to take a lot of courage to move forward. There is nobody in this Senate that has more courage than the Senate President, in my opinion; however, it may take some unilateral action on the part of the Senate if we are really serious about reducing the level of our responsibilities. I would include in that, the possibility that we might side in a given year to postpone all of our legislation to the following year. That would certainly reduce our work load in the first year. If we agreed as a group that we wanted to consider nothing but the budget, if we had the discipline to do that, then in the second year, all the House bills that would be postponed in the second year, we could take up, and the Senate bills, I might add. If there were Senate bills or House bills that were of an emergency nature, we might be able, we would be able to suspend the rules and pass those bills along. Now I understand that we are treading on new ground and this would cause a lot of individuals who feel that the institutions of biennial sessions should be applied to annual sessions, but those are the chances that we have to take. They may be unpopular and they may create confusion, but we have to do this, because we are not going back to biennial sessions, whether we like it or not, we are in at the annual session mode. So I hope that over the next 1 1/2 or 2 years that we could move to address these issues aggressively.

SENATOR DUPONT: Senator would you also believe that as Senate President with the rules committee, we need to make some of those determinations about allowing bills in for the second time in a session even though our rules specifically say that there won't be that implicity in that second year if the bills are brought in. I will also tell you that one of the things that is very, very difficult with Rules and myself to deal with when a legislature has a piece of legislation that they feel very strongly about and trying to discourage them from bringing it in the second year is next to impossible. Because we do in fact tend to like the opportunity to bring our issues to the floor and don't accept defeat very kindly. While we are talking about many of these things today on the floor, I thought that I should just bring to your attention that those issues that you raised.

A lot of us have spent some time on them and although it sounds like it is very easy to do, when it gets to the point of getting the House convinced about limiting what we are going to do as a legislature and telling legislators that they can't introduce bills in the second year, that is not a very popular way that you go on.

SENATOR BASS: Mr. President, I would agree with that and I would add a couple of points. This is a particularly difficult issue to work with because you have to work biennially on the issue. So for example, this year, it is hard for us to work on what we are going to do next year, because some of us may or may not be here and you never know who the next leadership group is going to be in either house. Once you get into the next session, you can't affect that session, because you are already in that session. I don't doubt for a second that these matters have been discussed, but I would point out that if we could set up a process whereby we consider our policy issues in the second year, rather than the first year, then the issue for a legislator would be, is my bill so important that I can get it through on a 2/3's vote rather than a simple majority, that would be the issue. You wouldn't, as a Rules committee be saying, you can't introduce it, you would simply be making a report to the body that would say we do not recommend the introduction of this bill at this time. If that legislator was able to get 2/3's of the body to support it, it could be considered. If that legislator failed, that individual could not be denied the opportunity to have that bill considered, it would simply be considered in due course in the second year. I think that if you have money matters in the first year and policy matters in the second year, you wouldn't have as much resistance on the part of individuals who feel that their opportunities to introduce their bills have been somewhat restricted.

SENATOR DUPONT: Thank you, Senator Bass.

SENATOR BLAISDELL: Mr. President, I was going to move the question. I want to speak now. Senator Hough has had his day in the sun and I think that he deserves it. But now I want to speak. I rise in opposition to the ought to pass motion. I agree with Senator Hough and I agree with what Senator Bass has said. I don't know in this legislative session, you can go downstairs and check, I think that my name is on three pieces on legislation, I am not sure. I don't know how many have your name on it, Gordon, or anyone else in this room. I have sat here and listened all afternoon to all the bills, maybe we don't even have to be here, maybe we shouldn't be a citizen legislature, give the Governor the veto line item and we will go home. Let him do that. Put a cap on spending like we got here in CACR 31. Nobody yet has mentioned in this chamber that for 20 years we have

been making up for 100 years of neglect in this state, nobody says that. Nobody says that the 20 states that you talk about Senator Humphrey, are they under court order like we have been court ordered to fix our prisons, to fix our youth development center, to fix our state hospital? No. No, they are not. I'll defy anyone on them. What has happened in this state is that this legislature accepted its responsibility to take care of what all of us think, I can cry, who is it that asked me if I was going to give one of my crying speeches, I think it was you, Senator Heath. Well before you leave, Senator Heath, I am going to cry, so I want you to know that before you leave. If you are not going to go, let me know, because I don't like to cry that often, alright. But I mean really, if we hadn't been here, what would have happened, Senator Podles, to maybe your Manchester Airport? Could we have waited for another year for that, that means a lot to the state of New Hampshire. Can we look at other pieces of legislation that I think are excellent pieces of legislation that have been brought into this Senate that will benefit the people of this state, will put people back to work like Senator Humphrey wants to. We have been here. To those of us Senator McLane, Senator Hough, I know, we are known as the liberals and the el banditos and everything else, but we had to take and except a responsibility to take care of the human needs of the people of this state. It is here that we have done it. We have accepted it. No we haven't had any reductions in the budget. Nobody has brought them to me anyway that wanted reductions, we have talked about that before. What would have happened if Commissioner Bird shut down human services, would we be back here on the 15th of February? Yes you would have, because they would have been out of money and to take care of . . . all you people like nursing homes, make sure we take care of them, got to be careful, take care of them, be sure that you take care of handicap too, be sure now, take care of this, take care of that, I can list them all to you. That is why we are here, to accept a responsibility that the people put into it. I oppose this. As I said, my idea of annual sessions was to take a hard look at the second session, to take a look at the budget process, to take a look at what the revenue projections were, whether or not we were wrong. We had to have an adjustment to the budget, we did it. We have done it I don't know how many times here. So that is the reason that we are here every year and the reason that we should be here every year, because there are very important things that come before this legislature and we should address it. That is my reason.

SENATOR DISNARD: Perhaps my ears are burning and perhaps I am sensitive, but I am tired of being lectured. I respectfully make this statement. I heard the sponsor of the bill mention a cost of

\$1,200. If you look at your computers you will see where he sponsored 17 bills, 17 bills times \$1,200, over \$20,000. I understand from the clerk, 185 bills have been introduced in the Senate this year. I say, if the people feel that there is too much expenditure in the terms of bills being submitted in some year after year, perhaps we should clean our own house first.

SENATOR HUMPHREY: Senator, does the computer show that the Senator from district #17 himself introduced 12 bills and the rest are bills in which he has supported at the request of other Senators?

SENATOR DISNARD: That was the way that it was presented to me. You are probably right, I won't tell you where, but the way that it was presented to me was 16 and one that you co-sponsored.

SENATOR HUMPHREY: And does the computer show that last year the Senator authored maybe three or four bills, so that his two year average is maybe seven or eight?

SENATOR DISNARD: Well sir, like a baseball player, I don't know how important the averages are from one year if you have it zero one year and a lot the next year. I am just saying, Senator, since you asked me the question, you have the right to submit any numbers that you want. I just feel that I was getting lectured and the others were getting lectured and I feel that it is out of place.

SENATOR HUMPHREY: I don't know how to put this in a form of a question. For lack of better words. Can you understand, Senator, that this Senator was not lecturing and did not mean to lecture. He simply cited statistics which show the advent of annual sessions has driven up the number of bills from anywhere from about 40 percent to about 60 percent, depending upon the years of comparison?

SENATOR DISNARD: Yes, and I accept what you have told me. I apologize if you say three in one year and four or five in the next year, I accept that.

SENATOR W. KING: Mr. President, I will be brief. The other day some of us were referred to as pygmies, and I think the foreign language that Senator Dupont has now identified as a virtue of challenge. The correct term for those of us who, for at least some us who serve in the legislative now under the annual session is fiscally challenged. But I rise to say that as I have done in the past, I will vote for the motion, but that I support annual sessions and will campaign against annual sessions, if this gets on the ballot. I want to make two points; number one is that Senator Humphrey and Senator Colantuono and others in this chamber have decried the workings of the Fiscal committee over and over and over again, and if we go back to biennial sessions, who will control what happens when we are not

here looking over the shoulders of the bureaucracy, fiscally? Regardless of how you feel about the Fiscal committee, it is important to recognize that the role that they play becomes even more powerful when this legislature is not in session. The second thing that I want to mention; is the notion that we are a citizenship legislature. If we truly wanted to be a citizen legislator, we would pay people to come to serve here just enough so that they could survive and just a small enough amount so that there wouldn't be any great incentive for the wealthy to serve. As it is, most people, whether you have an annual session on the legislature or a biennial session of the legislature, most people in this state could not afford to serve in this legislature. If you are retired, perhaps, if you are independently wealthy, yes. If you are nuts, like Senator Dupont and myself and others are, yes. You can do it, but you are fiscally challenged. The bottom line for me on that issue is that if we really want a citizen legislature, we ought to pay people enough so that citizens who are of modest means of this state could actually afford to serve in this body and that would do more to bring this body and the body across the wall here, in touch with the people of this state than anything we can do on biennial sessions or line item vetoes or any other action similar to that.

SENATOR HEATH: Senator King, when you were trying to make the point that if this would empower the Fiscal committee, do you understand that the Fiscal committees powers are established by this body and that they could be taken back by this body? In fact, that there is pretty good authority that the Fiscal committee violates the constitution in so far as it assumes executive powers?

SENATOR W. KING: Senator Heath, I would venture to say that you would not get this body to give that power to the Governor as oppose to giving a body of Senators or Representatives the power to make those decisions.

SENATOR DUPONT: In difference to my colleague, Senator Hough, I rise in support of the motion of ought to pass that is before us on CACR 32 which is consistent, I believe, with my support in the past of legislation like this that would put the question back before the voters of the state. One of the things that has been raised here today, is in fact, I believe, when this was originally put before the voters, their understanding of how this legislature was going to operate and how annual sessions did turn out. It was basically portrayed considerably different to some of us who were on the ballot that time as myself, as I was at that time, certainly my understanding of how the process was going to work was considerably different. I would like to bring a little bit different prospective to the debate, not a lecture, just some things for our colleagues to consider. It is



very important to me and, I think, to many others in this body, that when you came into this body, you did not come in here other than to continue your public service. A lot of us served at the local level either as selectmen or city councilors, moving up in the political world for us was to come to Concord and be a legislator. Most of us when we came into this body didn't have aspirations for higher office. This was in fact where we intended to pursue our political career and then go back to being good citizens of the communities that we came from. The important point that I am trying to make is what happens in New Hampshire at the present time is not what is going on inside this body, it is what is going on outside. The more time that we spend in Concord as legislators, the less that we understand the dynamics of the people that we represent. I know of no better example than the federal congress in Washington, who for all intents and purposes are citizens of that area that don't spend time with their constituents and don't have to go out and earn a living and don't have to spend time with their families. It just does not make any sense for us to stand here and say that we represent the people of New Hampshire when the time that we are spending inside this state house truly doesn't represent what is going on in the state of New Hampshire at the present time. I didn't come here to be a full time legislator. As Senate President, it has evolved into a full time job for me and I respect and appreciate the bodies support for me in that endeavor, but I have found as a legislator, that the more responsibility that I have taken here, whether it be a member of the Fiscal committee or as majority leader, that ultimately, what that does is reduce the amount of time that I can spend with the people that I represent. It is, I believe, incumbent upon all of us to recognize the value of a citizen legislature. It is incumbent upon us to recognize that the process in New Hampshire does work and we do represent the state well. I think for a legislature that this body has certainly lived up to the expectations of the people of our state. The choice clearly, as we go down this route is whether or not we are going to stay as a citizen legislature. As I agree with Senator King, that many of us came in here a little wealthier than we are now, a little better off with businesses that were in a little bit better shape than they are today. Certainly that has to be a consideration for all of us. This should not be a sacrifice, and it is, and we all accept that sacrifice. We all know what we have to give up to serve and I don't believe that our constituents elected us that they expected us to give up our normal lives to come over here and be a legislator. So when we vote on this I want you to clearly recognize that as we have gone down this road of biennial sessions, away from biennial sessions to annual sessions that the pressures on this legislature have become increasingly more complex, the issues have become more complex. One final

point that I would like to make, we never recognize our impact on agencies whose department heads have to sit in front of us six months out of each year, the people that we represent that come before this legislature to testify and on some bills, every year. Finally, on the fact that we have now developed a process that doesn't give us the time anymore to study issues, we get out of here in June, bills are already beginning to be filed again in September. When I first came in, this legislature was in biennial sessions and my first work as a legislator, because I came in after the session had ended in a special election, was to spend some fairly significant amount of time studying issues in study committees. Our study committees have basically evolved into a two month study committee between sessions and it just doesn't make any sense that we deal with more complex issues to have allowed ourselves less time to study those issues. I again, am in support of this CACR, and I encourage my colleagues to recognize the values that we have as a citizen legislature and make sure that when we act today that we are moving ahead in trying to preserve those values rather than moving towards a full time, fully paid legislature.

SENATOR OLESON: Thank you, Mr. President, pro tem. I will try to be as brief as possible, if that is possible. But nevertheless, I happen to be in favor of the annual sessions and I will tell you why. I had a representative one time tell me that he went down here to be an errand boy and never ran an errand for any of his constituents. Very lucky, because maybe a good percentage of my time that I am down here, I am doing exactly that. On the way home I have to go by four or five town halls and some of the selectmen, so I stop in and I speak to them about what is going on. Some of the officials in some of my small towns said 'Otto, last year you saved us several hundreds of dollars', because these are small towns that can't afford, I don't think they can afford some of high priced lawyers, so they depend on me to run the errands out and get the information back to them which they need to run the business in the small towns. So in all the ways, I look at myself as kind of a glorified errand boy, but so be it. But I think that I do spend maybe more time here than most Senators do because, simply because we do have so many small towns that cannot afford the people and the town managers and the lawyers that a large population can, so they depend on me to a certain extent, to do their business for them which other larger communities can. That is one of my excuses for being here. I usually am running an errand or trying to collect information for my small towns even though I would sympathize with Senator Humphrey. We had a Representative Sackett in the member of the House, he had a

rhyme, I usually can memorize poetry, but I can't at this period of time, but the theme of it was 'everybody beware the legislature is in session'. Thank you very much.

Question is on the committee motion of ought to pass.

A 3/5 vote required.

A roll call was requested by Senator Humphrey.

Seconded by Senator Nelson.

The following Senators voted yes: W. King, Heath, Fraser, Dupont, Currier, Roberge, Nelson, Colantuono, Podles, Humphrey, Russman, Delahunty.

The following Senators voted no: Oleson, Hough, Disnard, Blaisdell, Bass, Pressly, McLane, J. King, Shaheen, Hollingworth, Cohen.

Yeas 12

Nays 11

A 3/5th vote was not acquired.

Motion of ought to pass fails.

Senator Shaheen moved inexpedient to legislate.

Adopted.

CACR 32 is inexpedient to legislate.

Recess.

Senator Dupont in the Chair.

**SB 420-FN**, an act relative to interviewing children under the provisions of the Child Protection Act. Judiciary committee. Ought to Pass with Amendment. Senator Colantuono for the committee.

**5036L**

### **Amendment to SB 420-FN**

Amend the bill by replacing section 1 with the following:

1 Child Protection Act Interviews; Audio tape Requirement Added.

I. Any interview of a child conducted under RSA 169-C, the Child Protection Act, by the division for children and youth services, or by a therapist, attorney, other than the attorney for the child, or any other person, acting as an agent of the division to determine if a child has been neglected or abused should be tape recorded.

II. These recordings shall be filed with the court, shall become part of the record of the case, and shall be made available, under the supervision of the court, to all parties 5 days before any hearing at which the division intends to use any report of such interview, other than the preliminary hearing. These recordings shall not be released for any other purposes.

III. If the conditions stipulated in paragraphs I and II of this act are not complied with, any oral or written report of the interview shall not be admissible as evidence in any proceeding under RSA 169-C.

SENATOR COLANTUONO: This bill was put in at the request of Sarah Dustin, for Parents for Justice. It is designed to be a stop gap measure until the Attorney General's Task Force on Abuse and Neglect come out with their guidelines regarding interviews, that is in paragraph two of the bill. This bill will be repealed once that is done. The purpose of the bill is to suggest that interviews of children made for the purposes of determining whether there has been abuse and neglect be tape recorded for further use in case there is a court case to make sure that what is presented to the court as having been what the child has said, is actually the case. There were numerous horror stories related to the committee of situations where social workers either lead the children or misstated what they said to the court. The problem that you have in juvenile cases is that there are no rules of evidence and any kind of hearsay can be put into evidence. This is one way of making a fairer hearing for parents who are trying to defend themselves against charges of abuse and neglect, because the parents can have access to the tapes and a transcript can be made to make sure that there is an accurate rendering of what the child has said. At the committee hearing there was opposition from prosecutors who thought that this bill might weaken criminal prosecutions. I frankly think, that their complaints were misplaced, but in any event, the committee worked on the bill and made several changes which appear on page 15 of the amendment. The important part of the bill is now the amendment on page 15. The committee unanimously supported the bill once those changes were made. The committee asks ought to pass with amendment.

SENATOR MCLANE: Senator Colantuono, the original bill also called for some sort of polygraph of young children, is that correct?

SENATOR COLANTUONO: No.

SENATOR MCLANE: Okay. I guess my second question would be, it seems to me that this is a bill that is extremely critical of DCYS and the job that they have done in interviewing young children and I wonder as this is a bill that came up without any sort of study by the legislature, with opposition from some very respected people, why your committee couldn't wait until the Attorney General's report came forth when we all could be sure. If you are so unsure of this bill that you are going to even put in something that says that it doesn't go into effect after the Attorney General's report, why can't you wait for it?

SENATOR COLANTUONO: I guess the answer is that there is a perceived need to make this change at this time to protect families who get torn apart by these cases wrongfully. Because that has happened. There was evidence that that has happened.

Committee amendment adopted.

Ordered to third reading.

**SB 452-FN-LOCAL**, an act redistricting certain district courts. Judiciary committee. Ought to Pass with Amendment. Senator Colantuono for the committee.

**5040L**

### **Amendment to SB 452-FN-LOCAL**

Amend the bill by replacing all after the enacting clause with the following:

1 Redistricting of District Courts. RSA 502-A:1 is repealed and reenacted to read as follows:

502-A:1 Judicial Districts. A comprehensive system of judicial districts, each with a district court, is hereby organized, constituted and established as follows:

#### **Rockingham County**

I. PORTSMOUTH DISTRICT. The Portsmouth district shall consist of the city of Portsmouth and the towns of Newington, Greenland, Rye, and New Castle. The district court for the district shall be located in Portsmouth, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be Portsmouth District Court.

II. HAMPTON-EXETER DISTRICT. The Hampton-Exeter district shall consist of the towns of Hampton, Hampton Falls, North Hampton, South Hampton, Seabrook, Exeter, Newmarket, Stratham, Newfields, Fremont, East Kingston, Kensington, Epping, and Brentwood. The court shall be located in a city or town within the judicial district in a location and facility designated pursuant to RSA 490-B:3, having regard for the convenience of the communities within the district, provided, however, that the court shall not be located in any building which does not meet the minimum standard prescribed by the New Hampshire court accreditation commission pursuant to RSA 490:5-c. The court shall bear the name of the city or town in which it is located.

III. DERRY DISTRICT. The Derry district shall consist of the towns of Derry, Londonderry, Chester, and Sandown. The district court for the district shall be located in Derry, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be Derry District Court.

IV. AUBURN DISTRICT. The Auburn district shall consist of the towns of Auburn, Candia, Deerfield, Nottingham, Raymond, and Northwood. The district court for the district shall be located in Auburn, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be Auburn District Court.

V. SALEM DISTRICT. The Salem district shall consist of the towns of Salem and Windham in Rockingham county and the town of Pelham in Hillsborough county. The district court for the district shall be located in Salem, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be Salem District Court.

VI. PLAISTOW DISTRICT. The Plaistow district shall consist of the towns of Plaistow, Hampstead, Kingston, Newton, Atkinson, and Danville. The district court for the district shall be located in Plaistow, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be Plaistow District Court.

### **Strafford County**

VII. DOVER-SOMERSWORTH-DURHAM DISTRICT. The Dover-Somersworth -Durham district shall consist of the cities of Dover and Somersworth and the towns of Rollinsford, Durham, Lee, and Madbury. The court shall be located in a city or town within the judicial district in a location and facility designated pursuant to RSA 490-B:3, having regard for the convenience of the communities within the district, provided, however, that the court shall not be located in any building which does not meet the minimum standard prescribed by the New Hampshire court accreditation commission pursuant to RSA 490:5-c. The court shall bear the name of the city or town in which it is located.

VIII. ROCHESTER DISTRICT. The Rochester district court shall consist of the city of Rochester and the towns of Barrington, Milton, New Durham, Farmington, Strafford, and Middleton. The district court for the district shall be located in Rochester, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be Rochester District Court.

### **Belknap County**

IX. LACONIA DISTRICT. The Laconia district shall consist of the city of Laconia and the towns of Meredith, New Hampton, Gilford, Belmont, Alton, Gilmanton and Center Harbor. The district court for the district shall be located in Laconia, holding sessions

regularly therein and elsewhere in the district as justice may require. The name of the court shall be Laconia District Court.

### **Carroll County**

X. CONWAY DISTRICT. The Conway district shall consist of the towns of Conway, Bartlett, Jackson, Eaton, Chatham, Hart's Location, Albany, Madison and the unincorporated places of Hale's Location, Cutt's Grant, Hadley's Purchase, and Livermore. The district court for the district shall be located in Conway, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be Conway District Court.

XI. OSSIPPEE-WOLFEBORO DISTRICT. The Ossipee-Wolfeboro district shall consist of the towns of Ossipee, Tamworth, Freedom, Effingham, Wakefield, Wolfeboro, Brookfield, Tuftonboro, Moultonborough, and Sandwich. The court shall be located in a city or town within the judicial district in a location and facility designated pursuant to RSA 490-B:3, having regard for the convenience of the communities within the district, provided, however, that the court shall not be located in any building which does not meet the minimum standard prescribed by the New Hampshire court accreditation commission pursuant to RSA 490:5-c. The court shall bear the name of the city or town in which it is located.

### **Merrimack County**

XII. CONCORD DISTRICT. The Concord district shall consist of the city of Concord, and the towns of Loudon, Canterbury, Dunbarton, Bow, and Hopkinton. The district court for the district shall be located in Concord, holding sessions regularly there and elsewhere in the district as justice may require. The name of the court shall be Concord District Court.

XIII. HOOKSETT DISTRICT. The Hooksett district shall consist of the towns of Allenstown, Pembroke, and Hooksett. The district court for the district shall be located in Hooksett, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be the Hooksett District Court.

XIV. FRANKLIN DISTRICT. The Franklin district shall consist of the city of Franklin and the towns of Northfield, Danbury, Andover, Boscawen, Salisbury, Hill, and Webster in Merrimack county and the towns of Sanbornton and Tilton in Belknap county. The district court for the district shall be located in Franklin, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be Franklin District Court.

XV. HENNIKER-HILLSBOROUGH DISTRICT. The Henniker-Hillsborough district shall consist of the towns of Henniker, Warner, and Bradford in Merrimack county and the towns of Hillsborough, Deering, Windsor, Antrim and Bennington in Hillsborough county. The court shall be located in a city or town within the judicial district in a location and facility designated pursuant to RSA 490-B:3, having regard for the convenience of the communities within the district, provided, however, that the court shall not be located in any building which does not meet the minimum standard prescribed by the New Hampshire court accreditation commission pursuant to RSA 490:5-c. The court shall bear the name of the city or town in which it is located.

XVI. NEW LONDON DISTRICT. The New London district shall consist of the towns of New London, Wilmot, Newbury, and Sutton. The district court for the district shall be located in New London, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be New London District Court.

XVII. PITTSFIELD DISTRICT. The Pittsfield district shall consist of the towns of Pittsfield, Chichester, and Epsom in Merrimack county and the town of Barnstead in Belknap county. The district court for the district shall be located in Pittsfield, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be Pittsfield District Court.

### **Hillsborough County**

XVIII. MANCHESTER DISTRICT. The Manchester district shall consist of the city of Manchester. The district court for the district shall be located in Manchester, holding sessions regularly therein as justice may require. The name of the court shall be Manchester District Court.

XIX. NASHUA DISTRICT. The Nashua district shall consist of the city of Nashua and the towns of Hudson, Hollis, and Litchfield. The district court for the district shall be located in Nashua, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be Nashua District Court.

XX. MERRIMACK DISTRICT. The Merrimack district shall consist of the towns of Merrimack and Bedford. The district court for the district shall be located in Merrimack, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be the Merrimack District Court.

XXI. MILFORD DISTRICT. The Milford district shall consist of the towns of Milford, Brookline, Amherst, Mason, Wilton, Lyndeborough, and Mont Vernon. The district court for the district shall



be located in Milford, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be Milford District Court.

**XXII. JAFFREY-PETERBOROUGH DISTRICT.** The Jaffrey-Peterborough district shall consist of the towns of Peterborough, Hancock, Greenville, Greenfield, New Ipswich, Temple, and Sharon in Hillsborough county and the towns of Jaffrey, Dublin, Fitzwilliam, Troy, and Rindge in Cheshire county. The district court for the district shall be located in Jaffrey or Peterborough, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be Jaffrey-Peterborough District Court.

**XXIII. HENNIKER-HILLSBOROUGH DISTRICT.** The Henniker-Hillsborough district shall consist of the towns of Henniker, Warner, and Bradford in Merrimack county and the towns of Hillsborough, Deering, Windsor, Antrim and Bennington in Hillsborough county. The court shall be located in a city or town within the judicial district in a location and facility designated pursuant to RSA 490-B:3, having regard for the convenience of the communities within the district, provided, however, that the court shall not be located in any building which does not meet the minimum standard prescribed by the New Hampshire court accreditation commission pursuant to RSA 490:5-c. The court shall bear the name of the city or town in which it is located.

**XXIV. GOFFSTOWN DISTRICT.** The Goffstown district shall consist of the towns of Goffstown, Weare, New Boston, and Frances-town. The district court for the district shall be located in Goffstown, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be Goffstown District Court.

### **Cheshire County**

**XXV. KEENE DISTRICT.** The Keene district shall consist of the city of Keene and the towns of Stoddard, Westmoreland, Surrey, Gilsum, Sullivan, Nelson, Roxbury, Marlow, Swanzey, Marlborough, Winchester, Richmond, Hinsdale, Harrisville, Walpole, Alstead, and Chesterfield. The district court for the district shall be located in Keene, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be Keene District Court.

**XXVI. JAFFREY-PETERBOROUGH DISTRICT.** The Jaffrey-Peterborough district shall consist of the towns of Jaffrey, Dublin, Fitzwilliam, Troy, and Rindge in Cheshire county and the towns of Peterborough, Hancock, Greenville, Greenfield, New Ipswich, Temple, and Sharon in Hillsborough county. The district court

for the district shall be located in Jaffrey or Peterborough, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be Jaffrey-Peterborough District Court.

### **Sullivan County**

XXVII. CLAREMONT-NEWPORT DISTRICT. The Claremont-Newport district shall consist of the city of Claremont and the towns of Cornish, Unity, Charlestown, Acworth, Langdon, Plainfield, Newport, Grantham, Croydon, Springfield, Sunapee, Goshen, Lempster, and Washington. The court shall be located in a city or town within the judicial district in a location and facility designated pursuant to RSA 490-B:3, having regard for the convenience of the communities within the district, provided, however, that the court shall not be located in any building which does not meet the minimum standard prescribed by the New Hampshire court accreditation commission pursuant to RSA 490:5-c. The court shall bear the name of the city or town in which it is located.

### **Grafton County**

XXVIII. HANOVER-LEBANON DISTRICT. The Hanover-Lebanon district shall consist of the towns of Hanover, Orford, Lyme, Lebanon, Enfield, Canaan, Grafton, and Orange. The court shall be located in a city or town within the judicial district in a location and facility designated pursuant to RSA 490-B:3, having regard for the convenience of the communities within the district, provided, however, that the court shall not be located in any building which does not meet the minimum standard prescribed by the New Hampshire court accreditation commission pursuant to RSA 490:5-c. The court shall bear the name of the city or town in which it is located.

XXIX. HAVERHILL DISTRICT. The Haverhill district shall consist of the towns of Haverhill, Bath, Landaff, Benton, Piermont, and Warren. The district court for the district shall be located in Haverhill, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be Haverhill District Court.

XXX. LITTLETON DISTRICT. The Littleton district shall consist of the towns of Littleton, Monroe, Lyman, Lisbon, Franconia, Bethlehem, Sugar Hill, and Easton. The district court for the district shall be located in Littleton, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be Littleton District Court.

**XXXI. PLYMOUTH-LINCOLN DISTRICT.** The Plymouth-Lincoln district shall consist of the towns of Plymouth, Bristol, Dorchester, Groton, Wentworth, Rumney, Ellsworth, Thornton, Campton, Waterville, Ashland, Hebron, Holderness, Bridgewater, Alexandria, Lincoln, and Woodstock. The district court for the district shall be located in Plymouth, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be Plymouth District Court.

### **Coos County**

**XXXII. BERLIN-GORHAM DISTRICT.** The Berlin-Gorham district shall consist of the city of Berlin and the towns of Gorham, Milan, Dummer, Shelburne, and Randolph and the unincorporated places of Cambridge, Success, Bean's Purchase, Martin's Location, Green's Grant, Pinkham's Grant, Sargent's Purchase, and Low and Burbank's Grant. The court shall be located in a city or town within the judicial district in a location and facility designated pursuant to RSA 490-B:3, having regard for the convenience of the communities within the district, provided, however, that the court shall not be located in any building which does not meet the minimum standard prescribed by the New Hampshire court accreditation commission pursuant to RSA 490:5-c. The court shall bear the name of the city or town in which it is located.

**XXXIII. COLEBROOK DISTRICT.** The Colebrook district shall consist of the towns of Colebrook, Pittsburg, Clarksville, Wentworth's Location, Errol, Millsfield, Columbia, Stewartstown, and Stratford and the unincorporated places of Dix's Grant, Atkinson and Gilmanton Academy Grant, Second College Grant, Dixville, Erving's Location, and Odell. The district court for the district shall be located in Colebrook, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be Colebrook District Court.

**XXXIV. LANCASTER DISTRICT.** The Lancaster district shall consist of the towns of Lancaster, Stark, Northumberland, Carroll, Whitefield, Dalton and Jefferson, and the unincorporated places of Kilkenny Bean's Grant, Chandler's Purchase, Crawford's Purchase, and Thompson and Meserve's Purchase. The district court for the district shall be located in Lancaster, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be Lancaster District Court.

2 District Court Justices; Tenure Following Consolidation of Districts. Amend RSA 502-A:3-b to read as follows:

502-A:3-b District Court; Justices, Tenure Following Consolidation of Districts. In those instances in which [2] judicial districts are combined, the justices and special justices of the respective courts shall

continue to serve as justices or special justices of the newly created district and the senior justice of the [2 courts] **court** shall be designated the presiding justice of the district, **except where one of the justices is a full-time justice, in which case that justice shall be designated the presiding justice.** Upon the retirement, resignation, disability, or removal of [either] a justice or [either] special justice, the position shall be eliminated [leaving] **until** one justice and one special justice position **remain** for the district.

3 Special Justice; Pelham District Court. Amend 1987, 80:1 to read as follows:

80:1 Special Justice; Pelham Municipal Court. Upon the occurrence of a vacancy in the office of the justice of the Pelham municipal court, the special justice of the Pelham municipal court shall continue in office as a special justice of the [Nashua] **Salem** district court[, as authorized by RSA 502-A:3,] and shall hold sessions in Pelham [as authorized by RSA 502-A:3] **one day per week, notwithstanding the provisions of RSA 502-A:2.**

4 Contingency. Consolidation or redistricting under section 1 of this act shall take effect for each district court only when the facility to be utilized by the newly consolidated or redistricted district is certified as accredited or conditionally accredited by the court accreditation commission.

5 Effective Date.

I. Section 4 of this act shall take effect upon its passage.

II. Sections 1-3 of this act shall take effect January 1, 1993, or when the conditions of section 4 have been met.

SENATOR COLANTUONO: I think that I want to defer to Senator Shaheen, perhaps?

Senator Shaheen moved that we have SB 452-FN-L an act redistricting certain district courts laid on the table.

Adopted.

### LAID ON THE TABLE

SB 452-FN-L an act redistricting certain district courts is laid on the table.

**SB 454-FN**, an act relative to the felony committment procedure. Judiciary committee. Interim Study. Senator Podles for the committee.

SENATOR PODLES: Mr. President, SB 454 is the result of a task force to study the criminal justice in mental health systems. The committee expressed concerns regarding some of the provisions in the bill and they request further study.

SB 454-FN is sent to interim study.

**SB 456-FN**, an act requiring parental notification before abortions may be performed on unemancipated minors. Judiciary committee. No Recommendation. Senator Russman for the committee.

**SENATOR RUSSMAN:** The committee had two votes in favor and two votes against it, so because we could come to no consensus, we thought that the fairest thing to do would be to vote it with no recommendation and let some debate take place on the floor here and we thought that everybody knew where everybody stood on the issue so that there was really no point in debating it too far. That is the committee's recommendation.

Senator Humphrey moved Ought to Pass.

**SENATOR HUMPHREY:** Mr. President and ladies and gentlemen of the Senate, today a physician may perform an abortion on a minor not only without securing parental consent, but without so much as even notifying one parent. To me this is an unreasonable state of affairs and indeed an outrageous subversion of parental responsibility. This bill requires notification of one parent, one parent, prior to the performance of an abortion on an unemancipated minor. It does not require parental consent, it requires only parental notification and then, of only one parent. The fundamental purpose of the bill is to restore parental involvement to ensure that a parent may counsel a minor before an abortion is performed. I emphasize the word 'parent', some would have the minor counseled by others outside of the family. In my view, such outside counseling can never substitute for the counsel of one who has known the minor since birth on the most intimate basis, namely a parent. If the physician finds that the minor's life is threatened and there is insufficient time to provide notice to one parent, the notice requirement of the bill is waived. Further the bill contains a confidential judicial bypass provision for use in those cases where a minor chooses not to allow the notification of one parent. In such a case a judge may authorize the abortion if he or she finds the minor is mature and capable of giving informed consent or if the judge determines the performance of an abortion without notice of one parent would be in the minor's best interest. This is the weakest possible parental involvement bill. I believe that we should enact something even stronger, something would require parental consent before an abortion may be performed on a minor. This bill affords parents no rights, no rights to consent to the abortion or to withhold consent. It merely affords one parent the opportunity to be notified prior to the abortion being performed. Under current law parents in New Hampshire are deprived of their rightful role as counselors to their children. Everyone recognizes that pregnancy for an unemancipated minor is a stressful condition engendering

confusion, fear and even panic. Without parental consent a minor can too easily be pushed along by peer pressure, by pressure from the child's father who seeks to avoid his responsibility and even by pressure from those who mix politics with medicine. Absent counseling from one who has known her all her life and knows her best, a parent, a child can too easily rush into a decision which is fatal to her unborn child and which may cause her long lasting and emotional and physical harm. The language of this bill is taken almost verbatim from the Minnesota statute which was upheld as constitutional by the Supreme court in 1990 in Hodgson versus Minnesota. But where the Minnesota statute requires notification of both parents. This bill requires notification of only one. For emphasis, I repeat the bill contains a judicial bypass provision for use in those cases where parental notification is thought to be not in the minor's best interest. The bypass procedure is confidential and is to be expedited as is any appeal of a decision. We need this bill because except in life threatening emergencies, parents have a right to know before a physician subjects a minor to serious and irrevocable medical procedures. Presently in New Hampshire abortions can be and are performed on unemancipated minors without either parental consent or parental notification. I don't have to tell the members of this Senate that physical and emotional maturity do not occur at the same age, pregnant minors ought to have the counsel of at least one parent. Enactment of this bill is the very least, in my view, that the legislature should do. I thank my colleagues.

SENATOR SHAHEEN: Senator Humphrey and members of this body, the fact is that mandatory parental involvement laws don't work. In most cases teenagers who are considering an abortion consult parents and young women 15 or under, we know that 3/4's of them consult at least one parent. In cases where they don't it is because there is a situation of abuse or neglect that exists where they don't feel comfortable consulting a parent. You talked about a judicial bypass, Senator Humphrey. The fact is, that we know where a judicial bypass exists, virtually, 100 percent of those cases are allowed to go through with the abortion process because of the judicial bypass. Now last year when we had this very issue, exactly the same issue pending before the Senate. I was talking to my teenage daughter, and I have two teenage daughters. I would hope, like all of us would, that if they were ever in a situation where they were considering an abortion that they would feel very comfortable with coming to talk to me. But in talking to my oldest daughter about this issue and the fact that it was coming up, she said to me, "gee you know mom, if I ever got into that situation, I wouldn't want to come and tell you, because I wouldn't want you to be disappointed in me". I'll

tell you what, I am not going to put at risk one of my children just because I think I have a need to know what they are doing. By god, I would hope that they would come and talk to me and I have worked very hard for the last 17 years to make sure that we have a relationship so that she feels that she can, but if she can't, I am not going to put her life at risk because I need to know.

SENATOR HEATH: Senator Shaheen, in the amount of time that I have known you, I have come to believe that you are probably a very fine parent and I guess I found something at odds in your statements. You said that the majority of children would ask parental consent or consult with their parents and yet in a family, I am making the assumption that is a well brought up family, your children are well brought up and that you have a good open communication line, you made the statement that they or at least one child, probably would not come to you. Where do you generate figures that most of them do consult with their parent? It seems to me that you have almost contradicted what you have said?

SENATOR SHAHEEN: I was reporting on my daughters reaction. In fact several weeks ago there were a number of organizations that sponsored a hearing on the freedom of choice act and one of the young women who spoke at the hearing was a student at UNH who was an honor student, she recieved one of the Governors scholarships from high school. She had when she was in high school an abortion without letting her parents know that she was pregnant for the very reason that I talked about with my daughter. She didn't want her parents to be disappointed in her. She later went to them and talked to them and let them know that she had done that and they were very supportive. But that is the kind of situation that I am talking about. Most of us have heard about the case of Bonnie Bell, the young woman who died because she was afraid to go to her parents because of the laws in Indiana that require mandatory parental involvement. I don't even think that we can risk one child getting hurt.

SENATOR HEATH: But in fact, isn't it a fact, that there is no way to generate any picture of whether the average child does consult with a parent or doesn't because those figures aren't available anywhere because there is no record of them?

SENATOR SHAHEEN: The fact is, we can't mandate good communication within families. We can't mandate the parents who are supportive of their children and children who feel good about going to their parents, that is why this bill won't work.

SENATOR HEATH: Senator Shaheen, taking a worst case scenario, a 13 year old that finds herself pregnant, do you honestly be-

lieve that if that 13 year old chooses that she should have no consultation with an adult before requesting an abortion?

SENATOR SHAHEEN: I certainly believe that she should have consultation with an adult. What I don't believe, is that we can mandate that that kind of consultation take place within a family.

Senator Humphrey, I think that you talked earlier about how you were against government regulations on a number of pieces of legislation. But that is exactly what you are trying to do in this situation. You are trying to regulate how families interact and we can't do that. If this were an ideal world, then we could regulate it, but it is not.

Senator McLane moved to have SB 456-FN an act requiring parental notification before abortions may be performed on unemancipated minors laid on the table.

Question is on the tabling motion.

A roll call requested by Senator Humphrey.

Seconded by Senator Heath.

The following Senators voted Yes: Oleson, W. King, Fraser, Hough, Currier, Blaisdell, Bass, Pressly, Nelson, McLane, Russman, Shaheen, Delahunty, Hollingworth, Cohen.

The following Senators voted No: Heath, Disnard, Roberge, Colantuono, Podles, Humphrey, J. King.

Yeas 15

Nays 7

Adopted.

### LAID ON THE TABLE

SB 456-FN an act requiring parental notification before abortions may be performed on unemancipated minors is laid on the table.

**SB 466-FN**, an act providing for informed consent relative to abortion. Judiciary committee. No recommendation. Senator Colantuono for the committee.

SENATOR COLANTUONO: Yes, on a vote of two to two the committee was deadlocked and came out with no recommendation on this bill.

Senator Humphrey moved ought to pass.

SENATOR HUMPHREY: Ladies and gentlemen, you will be relieved to know, as I am relieved, that this is the last bill with my name on it which is on the calendar today. I am uncomfortable having so many of my bills come up in one day, but I didn't arrange it,



nor did anyone else, it is just an accident. I would like to begin by reading a few lines from an article published in the New York Times, January 2, 1992. I was shocked when I read it and I think that you will be too and it has nothing to do with abortion, so I hope that all ears will be open. It is here at my desk if anyone wants to read the entire article, I just want to read a few lines. It says "study backs deep anesthesia for babies in surgery. Boston, using deep anesthesia to protect newborns from pain during surgery appears to improve dramatically their chances of surviving and doctors should discontinue the common practice of minimizing the use of anesthetics for babies a new studies concludes. The study found that the stress of surgical pain, even in infants, even if the infants are unconscious seems to significantly increase the hazards of operations". Get this, "doctors have long used anesthesia and pain killers only sparingly on babies fearing that the substances are dangerous because they will suppress the infants blood pressure". Indeed babies once routinely underwent surgery without any anesthetic. "Many doctors believe that newborns did not feel pain the same way adults do". What do you suppose those doctors thought when those infants strapped down to these boards squirmed as the scalpel cut their flesh? Even in the modern age they used to operate on infants without anesthesia and even up until now. This study by the way was published by the New England Journal of Medicine, the establishment journal. Even until now doctors are using anesthesia sparingly when performing surgery on newborn infants. What is my point? My point is, if the experts, if physicians and experts can be ignorant of medical facts, how much more ignorant can people be? It took the experts decades to discover that babies suffer pain when their tissues are cut. If medical experts can make tragic mistakes about infant development, of children after they are born, how much more likely is it that they can make mistakes about infant development before a child is born? The bill before us, SB 466 provides for informed consent by women to the abortion procedure. The bill stipulates that no abortion shall be performed except with the informed consent of the woman, except in the case of an emergency, consent to abortion is informed only if the woman is told the following: The name of the physician who performs the abortion. Anything wrong with that? She has to be told the name of the physician. She has to be told the medical risk, including infection, hemorrhage, dangers to subsequent pregnancies and infertility. Anything wrong with that? Of course you can be sure that she will be told the risks of continuing the pregnancy as well. Three, the probable gestational age of her unborn child. She should know how far developed this child is. That is not unreasonable. The medical risks of carrying her child to term. That is not unreasonable. She must be told that medical assistance

benefits may be available for prenatal care, childbirth and neo natal care, which indeed they are. She must be told that the father is liable to assist in support of her child even if he has offered to pay for the abortion. Shouldn't she know that? And that she has a right to review the printed materials to be provided by the state of New Hampshire under this bill. Such materials describe the unborn child and list agencies which offer alternatives to abortion. In addition, the woman must certify in writing, prior to the abortion, that the information has been furnished to her and she has been informed of her opportunity to review the material. In other words, she doesn't have to look at it, but it must be made available for her review. Mr. President, the bill provides for the protection of the anonymity of the woman in any proceeding or action brought under this act. The penalty is against anyone who performs or attempts to perform an abortion in violation of the provisions of this act and such persons would be guilty of a misdemeanor. Any person upon whom an abortion has been performed in violation of this act, the father of the unborn child or the grandparent of the child may maintain an action against the abortionist for \$10,000 punitive damages and trouble whatever actual damage the plaintiff may have sustained. If an abortion has been attempted but not performed, the penalty is reduced to \$5,000 and treble actual damages. Lastly, let me focus on the materials to be supplied by the state for review by the pregnant woman. They are to constitute geographically indexed materials designed to inform the woman of public and private agencies and services available to assist a woman through pregnancy, upon child birth and while the child is dependent, including adoption agencies. In other words, the material simply tells in a geographical format where a woman may find services that will help her to get through pregnancy, childbirth and that time while her child is dependent on her. The materials will include a description of the services offered by these agencies and telephone numbers at which parties offering services may be contacted. The material is designed to inform the woman of the anatomical and physiological characteristics of the unborn child in two week gestational increments will be objective, non judgmental and design to convey only accurate scientific information. My colleagues, this bill has been carefully drafted to conform with those parts of Pennsylvania's informed consent law which have been constitutional by the federal courts and I ask my colleagues to support the motion. I thank the Chair.

SENATOR NELSON: I am a member of that committee who didn't vote on this issue. I rise in opposition to this motion that is on the floor because I think that it is not an abortion issue, it is not a choice issue, it is an issue that already exists. I just wanted to share a letter

with you that I have received from the Department of Public Health that says "the provision of written informed consent is already the standard of care prior to any surgical procedure. Typically informed consent consist of explaining to the patient the reasons for doing the procedure in question. The direct role that the Department of Public Health has in the licensing of health facilities in our administrative role, and the licensing of health care practitioners provides the division with the authority and mechanism to respond to consumer complaints". There is nothing at this time to indicate that any medical invasive procedure in the state is not being done without informed consent. I did a little bit of research on this and I have the form from one of the clinics even, one of the feminists health center, because I was absolutely appalled that in the state of New Hampshire there would be operations or any medical invasive procedure when the patient wasn't advised of their rights, be it female or a male for a vasectomy for example, because we wouldn't want anything happening, you know, without informed consent. So here is the consent form for abortion that is signed and in it, it says "My consent request and authorization for this procedure or procedures is made freely and voluntarily". I have also researched the statutes and in the patients bill of rights, RSA 151 #22, and I quickly want to say that I did use legal counsel to assist me in this along with the senior researcher, Veronica Kenary and she specifically states that if you look at paragraph three which comes the closest "to talking about actual medical care, the patient shall be fully informed by a physician of his health care needs and medical condition. Even in RSA 507-E:2 the burden of proof, paragraph 2, II, discuss a patients informed consent in the context of a medical malpractice suit". I commend my colleague. I am sure that people have worked hard on this, but in the state of New Hampshire, I just don't think that at this time that this is necessary. It would be an atrocity to think that we are having operations or any procedure without this. So on those grounds and on those grounds alone, I would not support the motion.

SENATOR HUMPHREY: Senator are you aware that those forms which the feminist health centers use are not required by law?

SENATOR NELSON: Right.

SENATOR HUMPHREY: They are just being used on a voluntary basis. I commend their use, but their use is not required by law. The purpose of this bill is to require a written consent form.

SENATOR NELSON: I am responding to that question by saying yes. But there is no written consent in law that a vasectomy, that a man has to sign, in order to get a vasectomy. I guess the problem that I am having is to single out just one form and put this on the

books, when in fact what we discover is that already in the patients bill of rights and it is standard operating procedure for these physicians to tell their patients, otherwise they would be sued off the map. Also in this letter from Public Health, it says "typically informed consent consists of explaining to the patient the reasons for doing the procedure in question, the potential risk of the procedure, therapeutic alternatives to the proposed procedure and the risks associated with doing nothing or doing some alternative procedure. Exactly how a patient is counseled will vary with the procedure in question. The ability of the patient to understand, and another fact is, this decision of exactly how to proceed appropriately, rest with the Health Care practitioner. I think that there is a point that this bill is going just a little too far to get involved in the doctor/patient relationship if this is a standard operating procedure.

SENATOR HUMPHREY: Well evidently the Senator feels that the written form consent portion of the bill is redundant, would that be correct?

SENATOR NELSON: Unnecessary. A rhetorical answer, why would we single out a group, this particular group and not only does it say that, sir, in this particular piece of legislation, it describes the type of print that should be used and I mean, I just think, it goes well beyond what is necessary if it is informed consent that you are trying to gather, excuse me, to pass.

SENATOR HUMPHREY: Does the Senator have any objection to requiring that a physician provide materials informing the women of public and private agencies and services available to her to assist her through pregnancy and through childbirth and through that period while her child is dependent?

SENATOR NELSON: Make no mistake about it, Senator Humphrey, as the mother of three children, I received all of that kind of information. I would expect that any woman who is going through this procedure as any gentlemen having a vasectomy would also, I would want them to receive it.

SENATOR HUMPHREY: Yes. Well the Senator keeps using vasectomy as some kind of parallel, surely the Senator recognizes that there is a difference between a vasectomy and an abortion?

SENATOR NELSON: I do recognize that difference, and I really do appreciate the difference there, but the point I am trying to make is that already in the state of New Hampshire if what I am reading is correct, then none of these procedures, including abortion, are done without a consent and information given to the patient. It would be . . . You know it is one thing to talk about abortion, but it is an-

other thing to talk about informed consent only for people who have abortions. Do you know what I mean? To suggest that those individuals who are using doctors who are licensed in the state of New Hampshire aren't getting informed, begs the question.

SENATOR SHAHEEN: Senator Nelson, am I correct in assuming that one of the points that you are trying to make is that women are being singled out in this procedure with the language of the bill. And that in fact, it ought to be if we are going to address informed consent in terms of surgical procedures, we ought to be addressing it with respect to men and women?

SENATOR NELSON: Could you just rephrase the question? It is a little hard to hear you, I apologize for not getting it all.

SENATOR SHAHEEN: Am I correct in assuming that one of the issues that you are trying to point out here is that this bill singles out women?

SENATOR NELSON: I think that it singles out women with one particular operation that I . . . if I supported this bill after long and careful thought and I am on the record as not having supported abortion, this is over and above abortion. This would say to me that a licensed doctor in the state of New Hampshire would be doing something different with a women in an abortion clinic and it just doesn't make sense.

SENATOR HUMPHREY: I would just point out again that these written medical consent forms that are used at present in our state are entirely voluntary in their use, they are not required by law. I would further point out that this bill not only requires full medical counseling, which one would hope is already being provided, but in addition, requires the provision of information on agencies who can provide services to the pregnant woman to assist her through pregnancy childbirth and the dependancy of her child. That the father is liable, she ought to know, and be provided printed materials to review letting her know that the child's father is liable to assist in support of her child even if he has offered to pay for the abortion. So this bill is far more than just a written informed consent piece of paper in written consent form, it is far more. It requires the providing to a woman for her review, if she cares to review it, a good deal more information than the debate so far has suggested. I would close finally, by pointing out if the bill were as flawed as some suggest, it would not have been found constitutional, the Pennsylvania law in which this is based would not have been found constitutional.

Senator McLane has moved the question.

Adopted.

Question is on ordering to third reading.

A roll call was requested by Senator Humphrey.

Seconded by Senator Heath.

The following Senators voted yes: Heath, Disnard, Roberge, Colantuono, Podles, Humphrey, J. King, Delahunty.

The following Senators voted no: Oleson, W. King, Fraser, Hough, Dupont, Currier, Blaisdell, Bass, Pressly, Nelson, McLane, Russman, Shaheen, Hollingworth, Cohen.

Yeas 8

Nays 15

Motion of ought to pass fails.

Senator Shaheen moved Inexpedient to legislate.

SB 466-FN is inexpedient to legislate.

**SB 472-FN**, an act relative to the victims' assistance fund and modifying sexual assault statutes and continuing a study committee. Judiciary committee. Ought to Pass with Amendment. Senator Colantuono for the committee.

**5050L**

#### **Amendment to SB 472-FN**

Amend the title of the bill by replacing it with the following:

#### **AN ACT**

relative to the victims' assistance fund, the definition of obscene material, modifying sexual assault statutes, and continuing a study committee.

Amend RSA 632-A:1, II as inserted by section 6 of the bill by replacing it with the following:

II. "Retaliate" means to undertake action against the interests of the victim, including:

- (a) Physical or mental torment or abuse; or
- (b) Kidnapping, false imprisonment or extortion; or
- (c) Public humiliation or disgrace.

Amend RSA 632-A:6, IV as inserted by section 10 of the bill by replacing it with the following:

**IV. At the request of a party the court shall, in cases under RSA 632-A, order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. This does not authorize exclusion of a party who is a natural person or a victim of the crime, or a person whose presence is shown by a party to be essential to the presentation of the party's cause.**

Amend RSA 651-A:7 as inserted by section 12 of the bill by replacing it with the following:

651-A:7 Eligibility for Release; Life Sentences. A prisoner serving a sentence of life imprisonment, except one convicted of murder in the first degree, [or] one convicted of murder which was psychosexual in nature and committed prior to April 15, 1974, **or one sentenced under RSA 632-A:11, III**, may be given a life permit at any time after having served 18 years. Eighteen years shall be deemed the minimum term of his sentence for the purposes of this section, minus any credits received pursuant to RSA 651-A:23, plus the disciplinary period added to such minimum under RSA 651:2, II-e, any part of which is not reduced for good conduct as provided in RSA 651-A:22, provided that there shall appear to said board to be a reasonable probability that he will remain at liberty without violating the law and will conduct himself as a good citizen. The provisions of this section shall not apply to a prisoner serving a life sentence when the court, pursuant to RSA 630:1-b, II, has specified a minimum term other than that prescribed in this section.

Amend the bill by replacing section 14 with the following:

14 Sentencing; Victims' Testimony Not Required. RSA 651:4-a is repealed and reenacted to read as follows:

651:4-a Victims Permitted to Speak Before Sentencing. Before a judge sentences any person for any of the following violent crimes against a person, the victim of the offense, or the victim's next of kin if the victim has died, shall have the opportunity to address the judge: capital, first degree or second degree murder; attempted murder; manslaughter; aggravated felonious sexual assault; felonious sexual assault; first degree assault; or negligent homicide committed in consequence of being under the influence of intoxicating liquor or controlled drugs. The victim or victim's next of kin may appear personally or by counsel and may reasonably express his views concerning the offense, the person responsible, and the need for restitution. The prosecutor, the person to be sentenced, and the attorney for the person to be sentenced shall have the right to be present when the victim or victim's next of kin so addresses the judge. The judge may consider the statements of the victim or next of kin made pursuant to this section when imposing sentence. The victim or victim's next of kin shall not be subject to cross-examination if he chooses to address the court.

Amend RSA 651:20, I(a) as inserted by section 16 of the bill by replacing it with the following:

(a) **Any person sentenced for any of the following violent crimes against a person shall not bring such petition to suspend sentence earlier than 4 years after commencement of said sentence nor more frequently than every 4 years thereafter: capital,**

**first or second degree murder; attempted murder; manslaughter; aggravated felonious sexual assault; felonious sexual assault; first degree assault; or negligent homicide.**

Amend the bill by inserting after section 16 the following and renumbering the original section 17 to read as 18:

17 Obscene Matter; Definition Modified. Amend RSA 650:1, IV(a) to read as follows:

(a) When applying the contemporary standards of the [county] **municipality** within which the obscenity offense was committed, its predominant appeal is to the prurient interest in sex, that is, an interest in lewdness or lascivious thoughts;

### AMENDED ANALYSIS

This bill repeals the prospective repeal of the victims' assistance fund. This bill also changes the prospective repeal of the court modernization fund from June 30, 1998 to June 30, 1994 and lapses the fund into the victims' assistance fund.

This bill also modifies the sexual assault statutes and adds specific penalties for a person convicted of aggravated felonious sexual assault and continues the joint and hoc committee to study the rape laws.

This bill also modifies the definition of obscene material to include application of contemporary municipality standards. Current law only applies to the contemporary standards of the county.

SENATOR COLANTUONO: SB 472 is the primary bill that came out of the rape study committee over the summer. I just want to say publicly that the Chairman of the committee, Senator Fraser did an excellent job Chairing this committee throughout the summer. The committee worked very hard thanks to his leadership and guidance and I just want to publicly commend him. Basically what this bill does is several important things. First of all, it back dates the prospective repeal of the victims assistance fund and what will happen is the money from the court modernization fund will go into the victims assistance fund four years earlier because the committee found that victims assistance is a very vital tool in giving services to rape victims in this state. It also makes some minor but important changes in the statutory definitions under the rape law that will help prosecutors win cases. I would be happy to answer some specific questions, but I won't go through those. The main thing that it does is greatly increase the potential penalties for someone convicted of forceable rape or as it is known in this state, aggravated felonious assault. Presently, an aggravated felonious assault is a class A felony which can only be punished by prison 7-1/2 to 15 years. This bill will make a first offense punishable by 10 to 20 years, a second offense 20



to 40 years and a third offense would be life without parole, which the committee felt very strongly that it should be in there. It then makes some changes in the bail laws, not allowing bail pending sentencing or appeal if someone is convicted of rape. It also restricts the ability of a person convicted of rape to go back to court for a suspension of his or her sentence. The present law allows that every two years, this law would make it every four years. The amendment on page 19 contains some technical revisions that the committee felt was important to make to the original bill. The amendment also contains a provision requested by Senator Delahunty. It changed the obscenity statute which isn't directly related to this, but is important also to help prosecutors prosecute obscenity cases in this state. So the committee would recommend ought to pass as amended. It is an important piece of legislation to go along with all of the other ones that we have passed already.

Recess.

Senator Currier in the Chair.

Committee amendment adopted.

Ordered to third reading.

**SB 474-FN**, an act relative to regular sessions of a district court in towns within the district. Judiciary committee. Ought to Pass with Amendment. Senator Podles for the committee.

**5032L**

### **Amendment to SB 474-FN**

Amend RSA 502-A:2 as inserted by section 1 of the bill by replacing it with the following:

502-A:2 Sessions in Towns Within District. The purpose of the establishment of this system of district courts is to provide the minimum number of courts which will adequately serve the convenience of the public, both transient and permanent residents of this state. To accomplish this purpose, districts must serve certain towns within their district having regard for the parties, the seasonal influx of population in certain areas, and such other considerations as the expeditious and effective administration of justice may require. In addition to the regular sessions which are required to be held in various districts under the provisions of this chapter, the justice or special justice of each district [shall] **may hold special sessions** in such localities within their respective district and at such times as may best serve the convenience of the communities within their district **provided, however, that no such special session shall be held in any building which does not meet the minimum standards pre-**

scribed by the New Hampshire court accreditation commission pursuant to RSA 490:5-c. [District courts are hereby directed to hold regular sessions in the towns as set forth in the following table, except that a district court shall not be required to hold regular sessions in a town if, upon written request by the town following the mandate of the local legislative body and written agreement between the court and the governing body of the town, it is determined that such sessions are no longer required for the effective administration of justice. Sessions once discontinued shall not be reinstituted except by agreement of both the court and the local legislative body. The following table sets forth the required regular sessions in towns:

<b>District Courts</b>	<b>Towns</b>
Exeter	Newmarket
Rochester	Farmington
Laconia	Meredith
	Alton
Nashua	Pelham
Milford	Wilton
Keene	Hinsdale
	Walpole
Claremont	Charleston
Lebanon	Canaan
Littleton	Bethlehem
Plymouth	Bristol
Lancaster	Northumberland
	(Groveton)
Merrimack	Bedford

Unless discontinued in the manner provided for above, sessions of district courts shall be held not less than one day a week in each of the towns listed above. The district courts enumerated above shall commence holding sessions as provided herein when the municipal courts in said towns are abolished as provided in RSA 502-A:35. No provision of this section shall be construed to prevent any district court from holding sessions in other localities within the district where justice and the convenience of the parties may so require. However, if regular sessions of a district court are to be held in such localities, such sessions shall be authorized by the administrative committee.]

SENATOR PODLES: Mr. President, SB 474 is making special sessions permissive, rather than mandatory. It allows the justice, a special justice to hold sessions that best serve the communities within the district providing that sessions be held in a building that meets minimum standards prescribed by the New Hampshire accredita-

tion committee. It also includes a minor clarifying amendment. We recommend ought to pass with amendment.

Committee amendment adopted.

Ordered to third reading.

**SB 343**, an act relative to reconsideration of town meeting and school district meeting votes. Public Affairs committee. Ought to Pass with Amendment. Senator Bass for the committee.

**5038L**

### **Amendment to SB 343**

Amend the bill by replacing section 1 with the following:

1 New Paragraphs; Express or Implied Alteration of a Restricted Vote. Amend RSA 40:10 by inserting after paragraph III the following new paragraphs:

IV. A restriction adopted under this section shall apply to any subsequent action by the meeting which either expressly or impliedly alters or modifies the result of the restricted vote, or which involves the same subject matter of business, or purpose of appropriation, as does the restricted vote or warrant article, regardless of whether or not the term "reconsider" is actually used.

V. This section shall apply to town meetings, cooperative school district meetings under RSA 195 and school district meetings under RSA 197.

SENATOR BASS: Mr. President, you may recall that a couple of years ago we addressed the issue of reconsideration of bonding issues that have come up in town meetings or school districts meetings again, later in the evening or day when everybody has left. We solved that problem by eliminating the option to reconsider a vote that had been taken in the same meeting without giving seven days notice and having another meeting. Since that time a problem has arisen and the same thing happens later on in the day or evening except a motion is made for a regular, instead of a bonding issue a regular budgetary item. This is considered to be just as serious, in fact more expensive if such a measure is passed. What the bill does is essentially, more clearly defines what the subject matter really means. The amendment applies that definition as to town meetings as well as school district meetings. The committee urges the Senates adoption of its report of ought to pass as amended.

Committee amendment adopted.

Ordered to third reading.

**SB 380**, an act relative to membership on planning boards in towns with the town council form of government. Public Affairs committee. Ought to Pass with Amendment. Senator Bass for the committee.

**4737L**

### **Amendment to SB 380**

Amend the title of the bill by replacing it with the following:

#### **AN ACT**

relative to membership on planning boards in towns with the town council form of government and relative to the 4-year exemption from certain subdivision regulations and zoning ordinances.

Amend the bill by replacing all after section 2 with the following:

3 Discretionary Extension of 4-Year Exemption. Amend the introductory paragraph of RSA 674:39 to read as follows:

Every plat or site plan approved by the planning board and properly recorded in the registry of deeds shall be exempt from all subsequent changes in subdivision regulations, site plan review regulations, and zoning ordinances adopted by any city, town, or county in which there are located unincorporated towns or unorganized places, except those regulations and ordinances which expressly protect public health standards, such as water quality and sewage treatment requirements, for a period of 4 years after the date of recording, **unless this period is extended at the discretion of the planning board**; provided, however, that once substantial completion of the improvements as shown on the plat have occurred in compliance with the approved plat, or the terms of said approval or unless otherwise stipulated by the planning board, the rights of the owner or his successor in interest shall vest and no subsequent changes in subdivision regulations or zoning ordinances shall operate to affect such improvements; and further provided that:

4 Effective Date. This act shall take effect 60 days after its passage.

### **AMENDED ANALYSIS**

This bill allows towns operating under the town council form of government to have 7 or 9 member planning boards, depending on the number specified by the local legislative body or the municipal charter.

The bill also gives planning boards the discretion to expand the 4-

year exemption afforded plats and site plans, from subsequent changes in subdivision regulations, site plan review regulations, and zoning ordinances.

SENATOR BASS: Mr. President, this bills allows town council form of governments to have seven versus nine members of the planning board. There are only six or seven town council forms of government in the state, they all support this bill. The amendment allows planning boards to extend permits at their discretion for an extended period of time more than four years, which is set by statute. It is at the discretion of the planning board and it simply creates a little bit more flexibility in allowing individuals who perceive or corporations who perceive permits to be able to hold projects that may not be economically viable at this time. The committee urges the Senates adoption of its report of ought to pass with amendment.

Committee amendment adopted.

Ordered to third reading.

**SB 391**, an act relative to the use of surplus campaign funds by candidates for state office. Public Affairs committee. Ought to Pass with Amendment. Senator Bass for the committee.

**4963L**

### **Amendment to SB 391**

Amend the title of the bill by replacing it with the following:

#### **AN ACT**

relative to the use of surplus campaign contributions  
by candidates for state office.

Amend the bill by replacing all after the enacting clause with the following:

1 Use of Surplus Campaign Contributions. RSA 664:4-b is repealed and reenacted to read as follows:

664:4-b Surplus Campaign Contributions. Surplus campaign contributions may be used after a general or special election for fund raising activities and any other politically related activity sponsored by the candidate. Such surplus campaign contributions, however, shall not be used for personal purposes.

2 Effective Date. This act shall take effect 60 days after its passage.

### AMENDED ANALYSIS

This bill prohibits a candidate from using surplus campaign contributions for personal purposes.

SENATOR BASS: Mr. President, the amendment replaces the original bill and essentially cleans up an inconsistency that existed in the present, chapter 664, relating to campaign financing. Currently, if you agree to the spending limitations provided for in the chapter, you cannot use surplus campaign contributions for personal purposes or transfer those funds to any other campaign. But if you don't agree with the spending limitation, you can do anything you want. What the amendment does is clean up that inconsistency and eliminate the requirement that you cannot transfer excess funds to any other campaign. Two paragraphs are combined to read "surplus campaign contributions may be used after a general or special election, fundraising activities or any other politically related activities sponsored by the candidate, but you can't use surplus campaign contributions for personal purposes". The committee urges the Senate's adoption of the committee report of ought to pass as amended.

SENATOR DISNARD: Senator Bass, political parties sponsor fundraisers, not individuals, but political parties. Would this allow or not permit an individual with surplus money to use some of that to attend a state political party fundraiser?

SENATOR BASS: The present law would not permit that. The amendment permits that.

SENATOR COLANTUONO: Senator Bass, can you tell the record and the body how this change will effect existing surplus campaign contributions of candidates who have already collected?

SENATOR BASS: The amendment would effect all surplus campaign balances.

SENATOR HUMPHREY: Senator, I am looking at line five on page two.

SENATOR BASS: The amendment replaces the bill.

SENATOR HUMPHREY: Okay, well my question is this, is one free to give his campaign funds to a charity?

SENATOR BASS: You can give your campaign funds to any source as long as it is not used for personal purposes.

SENATOR HUMPHREY: Alright, so the reference is to organizations partially or fully funded by state and local taxes?

SENATOR BASS: That is all out of the bill. The amendment simply clears up the existing chapter.

Committee amendment adopted.

Ordered to third reading.

**HB 1370**, an act to provide rotating 4-year county commissioner terms in Rockingham county. Public Affairs committee. Ought to Pass. Senator Bass for the committee.

**SENATOR BASS:** Mr. President, this bill allows for the rotation of offices for county commissioner in Rockingham county. This is currently done in six other counties. It comes about as a result of a study that the county put together to try to determine whether or not they needed a full time administrator. They determined that they didn't want to have a full time administrator, but in lieu of that, they felt that it was important to have continuity of service so that there would always be a county commissioner who had at least two years of experience if others were elected. At the present time they all come up for election at the same time. There was presented to the committee an amendment that would have had a different county commissioner subject to the election first. It was the committees feeling that they didn't want to get into a discussion as to which commissioner should come up for election first, so the committee voted to send the bill as it is as ought to pass and urges the Senate's support for that motion.

Adopted.

Ordered to third reading.

Senator Nelson in opposition to HB 1370.

**SB 399-FN-LOCAL**, an act requiring rabies shots for cats. Wildlife and Recreation committee. Ought to Pass with Amendment. Senator Fraser for the committee.

5023L

### **Amendment to SB 399-FN-LOCAL**

Amend the bill by replacing all after the enacting clause with the following:

1 Cat Added. Amend RSA 436:99, II-VI to read as follows:

II. "Vaccination against rabies" shall mean the inoculation of a dog **or** cat with a rabies vaccine licensed by the United States Department of Agriculture. Such vaccination shall be performed by a veterinarian duly licensed to practice veterinary medicine.

III. "Own", unless otherwise specified, shall mean to keep, harbor, or have control, charge, or custody of a dog **or** cat. This term shall not apply to dogs **or** cats owned by others which are temporarily maintained on the premises of a veterinarian or kennel operator.

IV. "Owner" shall mean any person keeping, harboring, or having charge or control of, or permitting any dog **or cat** to habitually be or remain on, or be lodged or fed within such person's house, yard, or premises. This term shall not apply to veterinarians or kennel operators temporarily maintaining on their premises dogs **or cats** owned by others.

V. "Stray" shall mean any dog that has wandered beyond limits of confinement or is lost and does not possess any tags of identification.

VI. "Transient dogs **or cats**" shall mean any out-of-state dog **or cat** temporarily housed in the state for any purpose.

2 New Paragraph; Definition of Cat Added. Amend RSA 436:99 by inserting after paragraph I the following new paragraph:

I-a. "Cat" shall mean any domestic feline animal, male or female, sexed or neutered.

3 Cat Added. Amend RSA 436:100 to read as follows:

436:100 Rabies Vaccination Required. Every dog **and cat** 3 months of age and older shall be vaccinated against rabies. Young dogs **and cats** shall be vaccinated within 30 days after they have reached 3 months of age. Unvaccinated dogs **and cats** acquired or moved into the state shall be vaccinated within 30 days after purchase or arrival, unless under 3 months of age, as specified above. Every dog **and cat** shall be revaccinated at such intervals and with such vaccines as the commissioner shall specify from time to time. In rabies infected areas, dogs **and cats** recently vaccinated shall be kept under control for at least 30 days before being allowed to run free.

4 Cat added. Amend RSA 436:101, I to read as follows:

I. Before vaccinating any dog **or cat** for rabies, the veterinarian shall receive the following statement completed by the dog's **or cat's** owner in his presence on the same day: I, \_\_\_\_\_ (owner's name) \_\_\_\_\_, swear that to my knowledge this dog **or cat** has not bitten anyone within 10 days. The veterinarian shall retain the statement in his files until the dog's **or cat's** next vaccination.

5 Cat Added. Amend RSA 436:102 to read as follows:

436:102 Duties of Veterinarian. It shall be the duty of each veterinarian, at the time of vaccinating any dog **or cat**, to complete a certificate of rabies vaccination in duplicate which includes the following information: owner's name and address, description of dog **or cat** (breed, sex, markings, age, name), date of vaccination, rabies vaccination tag number, type of rabies vaccine administered, and manufacturer's serial number of vaccine. Distribution of copies of the certificate shall be: the original to the owner; and a copy retained by the issuing veterinarian. The veterinarian and the owner shall retain their copies for the interval between vaccinations specified in RSA 436:100. A metal or durable plastic tag, serially numbered, shall be securely attached to the collar or harness of the dog **or cat**.



Whenever the dog **or cat** is out-of-doors, whether on or off the owner's premises, the collar or harness with the vaccination tag shall be worn.

6 Cat Added. Amend RSA 436:103 to read as follows:

436:103 Cost. The cost of rabies vaccination shall be paid by the owner of the dog **or cat**.

7 Cat Added. Amend RSA 436:104 to read as follows:

436:104 Transient Dogs **or Cats**. The provisions of this subdivision with respect to vaccination shall apply to any dog **or cat** owned by a person temporarily remaining within the state of New Hampshire, any dog **or cat** brought into the state for [field trials,] show purposes, [or] racing or transient hunting dogs **or dogs brought into the state for field trials**; each dog **or cat** shall be accompanied by individual rabies certificates and tags showing date of vaccination and type of vaccine used with expiration date.

8 Applicability. Amend RSA 436:105 to read as follows:

436:105 Impoundment of **Dog Rabies Suspects**. Any dog suspected of being afflicted with rabies, or any dog not vaccinated in accordance with RSA 436:100, which has bitten any person and caused an abrasion of the skin of such person shall be seized and impounded under the supervision of the local health authorities for a period of not less than 10 days. If, upon examination by a licensed veterinarian, the dog has no signs of rabies at the end of said impoundment, it may be released to the owner or, in the case of a stray, it shall be disposed of in accordance with applicable laws. It shall be the responsibility of the owner for any expense for the impoundment of the [animal] **dog**. If the [animal] **dog** is a stray, the town shall be responsible for the expense. Any dog vaccinated in accordance with RSA 436:100, which has bitten any person, shall be confined by the owner or other responsible person as required by local health authorities for a period of 10 days, at which time the dog shall be examined by a licensed veterinarian. If no signs of rabies are observed by the veterinarian, the dog may be released from confinement. It shall be the responsibility of the owner for any expense, examination and for the impoundment of the [animal] **dog**. If the [animal] **dog** is a stray, the town shall be responsible for the expense incurred. **This section shall not apply to cats.**

9 Applicability. Amend RSA 436:106 to read as follows:

436:106 Handling of Dogs Bitten by Rabid Animals. In the case of dogs known to have been bitten by a rabid animal, the following provisions shall apply:

#### I. UNVACCINATED DOGS.

(a) In the case of dogs which are not vaccinated in accordance with RSA 436:100 and which have been bitten by a known rabid animal, the dogs which were bitten and exposed to rabies shall be

immediately destroyed. The head shall be sent for examination to a diagnostic laboratory approved by the state veterinarian, unless the owner is unwilling as provided in subparagraph (b) of this paragraph. The town shall be responsible for the expense.

(b) If the owner is unwilling to destroy the [bitten (exposed)] dog, strict isolation of the dog, in a kennel under veterinary supervision and in cooperation with the local health authorities, for a minimum of 6 months shall be enforced. The expense of impoundment is to be paid monthly in advance by the owner[;]. In case of default in payment, the local health authority is empowered to destroy the dog after a 10-day grace period and the head is to be sent for examination to a diagnostic laboratory approved by the state veterinarian.

II. VACCINATED DOGS. If the [bitten (exposed)] dog is vaccinated in accordance with the provisions of RSA 436:100, the dog shall be handled as follows:

(a) Immediately revaccinated and confined for a period of 30 days following revaccination the owner of the animal [being] **shall be** responsible for any expense incurred. The type of confinement shall be at the discretion of the local health authority. At the completion of confinement, the [animal] **dog** shall be examined by a licensed veterinarian[,] and released if found by said veterinarian to be safe.

(b) If the dog is not immediately revaccinated, the dog shall be confined in strict isolation in a kennel for 6 months under the supervision of the local health authority in cooperation with a licensed veterinarian. The owner of the [animal] **dog** is responsible for all expenses incurred and [must] **shall** pay each month in advance. If there is default in payment, the local health authority is empowered to destroy the dog after a 10-day grace period, and the head is to be sent for examination to a diagnostic laboratory approved by the state veterinarian.

(c) The dog shall be destroyed if the owner does not comply with the provisions of subparagraph (a) or (b) of this paragraph.

### III. This section shall not apply to cats.

10 Applicability. Amend RSA 436:107 to read as follows:

436:107 Impoundment of Dog Without Tag. The rabies control authority shall authorize a pound or pounds, or shall enter into a cooperative agreement with a licensed veterinarian, or licensed animal shelter, for the establishment and operation of a pound. Any dog found off the owner's premises and not wearing a valid vaccination tag shall be impounded. All impounded dogs shall be given proper care and maintenance. Each impounded dog shall be kept and maintained at the pound for a minimum of 7 days unless reclaimed earlier by the owner. Notice of impoundment of all [animals] **dogs**, including any significant marks of identification, shall be posted at the pound as public notification of impoundment. Any unvaccinated dog may be

reclaimed by its owner during the period of impoundment by payment of prescribed pound fees and complying with the rabies vaccination requirement of this subdivision within 72 hours of release. Any vaccinated dog impounded because of lack of a rabies vaccination tag may be reclaimed by its owner by furnishing proof of rabies vaccination and payment of all necessary and reasonable impoundment fees prior to release. If the dog is unclaimed at the end of 7 days, the rabies control authority may dispose of the dog in accordance with applicable laws or rules. If the [animal] **dog** is a stray, the town shall be responsible for the expense incurred. **This section shall not apply to cats.**

11 Cat Added. Amend RSA 436:108 to read as follows:

436:108 Enforcement. [It shall be the duty of] The commissioner [to] **shall** enforce the provisions of this subdivision for the control of rabies in dogs **and cats**, and he shall adopt such rules as he deems necessary to carry out the intent of this subdivision.

12 Administrative Fine. Amend RSA 436:109 to read as follows:

436:109 [Penalties] **Penalty; Administrative Fine.**

**I.** Any person who violates any of the provisions of this subdivision shall be guilty of a violation.

**II. In addition to the penalty under paragraph I any person or owner who violates any of the provisions of this subdivision or rule adopted under it may be subject to an administrative fine levied by the commissioner, not to exceed \$1,000 for each violation.**

13 Effective Date. This act shall take effect January 1, 1993.

SENATOR FRASER: Mr. President, under current rabies control statute the rabies vaccination is only required of dogs. This was enacted in 1967 and has lead to a market drop in rabies cases among dogs. This bill as amended requires that cats be immunized against rabies. Currently there is a new string of disease that is moving into New England which is known as the mid-atlantic strain. It is affecting cats, skunks, raccoons and foxes as far north as Connecticut and is traveling between 25 and 75 miles a year. Cats being predatory animals are the link from wildlife rabies to human beings. The immunization of cats would break that link preventing individuals from being rabies exposed. The post exposure treatment of humans is painful and expensive, presently over \$1,000. The public health significance is great in both preventing illness and possible death to people as well as the expenses of post exposure treatment. At the hearing, testimony was given in support of the bill by the state Veterinarian, Department of Fish and Game, the Division of Public Health, the New Hampshire Veterinary Medical Association, the

New Hampshire Humane Society and the Concord SPCA. Mr. President, I urge the body to adopt 399 as amended.

SENATOR HUMPHREY: I would like to speak very briefly, I know that it is late, but I can't help but make the observation. I fully support this because it is good preventive medicine, but I find it a bitter irony that just a few days ago that the Senate refused to require testing of medical personnel who perform invasive procedures testing for the HIV virus on the one hand, which would be good preventive medicine, but on the other hand, a bill that requires immunization of cats is going through as it should, but I just want to point out the irony. Preventive medicine ought to be applied across the board without interference of politics, it seems to me.

Committee amendment adopted.

Ordered to third reading.

Recess.

Out of recess.

**SB 400-FN-A-LOCAL**, an act requiring fees in addition to licensure fees for dogs which are not spayed or neutered and using the increase to fund a state animal population control program and continually appropriating the companion animal population control fund. Wildlife and Recreation committee. Interim Study. Senator Bass for the committee.

SENATOR BASS: Mr. President, for many reasons which I won't go into at the present time, the committee feels that this bill needs further study.

SENATOR ROBERGE: Mr. President and members of the Senate, I have an alternate proposal and I would very much like to propose it to you. I would like you to vote down interim study and vote ought to pass and give me the opportunity to speak to this piece of legislation.

Interim study motion fails.

Senator Roberge moved ought to pass on SB 400-FN-L.

Adopted.

Recess.

Out of recess.

SENATOR ROBERGE: Mr. President, I would like to address amendment #5011L and speak to my motion. Ladies and gentlemen of the Senate, I talked with the Humane Society worker this morning who said that February is her favorite month because a smaller amount of animals enter the Humane Societies and as a result they

don't have to kill as many animals. She said that yesterday they only had to kill Pal and Baby and Cilly and an unnamed, abandoned, nine month old dog. To her, this was a very good day. On an average day, in an average month, 35 cats and dogs are put to sleep in New Hampshire animal shelters. That adds up to more than 9,000 cats and 3,000 dogs killed every year in New Hampshire shelters alone. Most are young healthy animals, able to provide years of companionship and love to someone. They are killed only because they have become homeless and there are no new homes for them. Because it has not been possible to find enough new homes for all of the animals born each year, Americans already keep more companion animals than any other country in the world. Our efforts must focus on reducing the birth rate. Experience has shown that spayed, neuter programs are the most effective way to do that. SB 400 establishes a low cost spaying and neutering program for low cost companion animal owners and people who adopt animals from shelters. This legislation, modeled after a New Jersey law which has helped make possible 50,000 spaying, neuter procedures in that state during the past eight years. As in New Jersey, the spaying, neutering programs established by this bill will be subsidized by an increase in the licensees paid by the owners of unsterilized dogs. There will be no cost to the state or any municipality. There has been opposition to this bill by breeders and sled dog owners who mistakenly assume that they will be assessed. The differential fees which are used to fund this program, all those who own at least five dogs, will be exempt from the differential fee as they license their dogs through a group license. With the rabies epidemic headed north, it is more important than ever that we address this problem of companion animal over population. Over the last decade cats have become the major companion animal over population problem. They are also the most common domestic source of rabies transmissions to humans. While it cannot be said that there is any good news when so many of our companion animals are being killed, there are reasons to be hopeful that our state will be among the leaders in solving this problem. New Hampshire people have a tradition of humane treatment of animals. Over a century ago, we were among the first to establish a Humane Society. Now we have strong and effective humane organizations in every part of the state. Through aggressive education, outreach and spay, neuter programs, New Hampshire humane organizations have been able to cut in half the number of animals killed in shelters. Since 1986, however, they have not been able to make as much progress by themselves. Even worse, in the past few years, there has been an increase in the number of animals killed. Humane organizations need our help, they deserve our help, Pal, Baby, Cilly and the unnamed abandoned dog should not have died yesterday. They only

died because we have not committed ourselves to act in their behalf. We have an opportunity today to do this by voting to pass this important piece of humane legislation. I would ask for your support for the amendment.

Senator Roberge offered a floor amendment.

**5011L**

**Floor Amendment to SB 400-FN-A-LOCAL**

Amend the title of the bill by replacing it with the following:

**AN ACT**

requiring fees in addition to licensure fees for certain dogs  
which are not spayed or neutered and using the increase  
to fund a state animal population control program  
and continually appropriating the companion  
animal population control fund.

Amend RSA 466:4, I(b) as inserted by section 1 of the bill by replacing it with the following:

(b) In addition to the sum required in subparagraph (a), each year the owner of any unneutered male or unspayed female dog, except those licensed under a group license, shall pay the clerk of the city or town where the dog is registered, a companion animal population control fee. Beginning on April 30, 1992, the companion animal population control fee shall be \$10.

Amend RSA 466:4, IV as inserted by section 1 of the bill by replacing it with the following:

IV. Fees for dogs licensed under a group license shall be based on the numbers of dogs licensed, as in RSA 466:6. The owner or keeper of any unneutered male or unspayed female dog licensed under a group license shall not be assessed a companion animal population control fee.

Amend RSA 437-A:5, I as inserted by section 3 of the bill by replacing it with the following:

I. There is hereby established the companion animal population control fund. Any funds received by the commissioner under this chapter and RSA 466:4, I(b), shall be deposited in the fund and shall be used by the commissioner exclusively for implementation, promotion and other costs, including personnel costs, associated with the program established under this chapter. Moneys in the fund shall be continually appropriated to the commissioner.

Amend RSA 437-A:7 as inserted by section 3 of the bill by replacing it with the following:

437-A:7 Enforcement; Administrative Fine. Any person who knowingly falsifies proof of eligibility for, or participation in, any

program under this chapter, who furnishes any licensed veterinarian with inaccurate information concerning the ownership of an animal submitted for a sterilization procedure, who furnishes the commissioner with false information concerning an animal sterilization fee schedule or an animal certificate submitted pursuant to this chapter or who violates any provision of this chapter or any rule adopted under this chapter may be subject to an administrative fine levied by the commissioner not to exceed \$1,000 for each violation.

### AMENDED ANALYSIS

This bill requires an owner of a dog that is not spayed or neutered to pay an animal population control fee in addition to the license fee unless the dog is licensed under a group license. The additional fee shall be used to establish an animal population control program to provide low-cost spaying and neutering services to eligible animal owners. The program is to be administered by the commissioner of the department of agriculture, and he is granted rulemaking authority for that purpose.

The bill establishes a fund into which the additional fees and other appropriate moneys are to be deposited. The fund is continually appropriated to the commissioner for the costs of administering the new law.

SENATOR HEATH: Senator Roberge, this amendment comes as a surprise to me, but it has failed to address the real question that I think most of the committee was concerned with. There is a lot of problems with it and it took out one or two of the problems, but it left some big problems. We asked the state Veterinarian if he would have to have more personnel to administer this because there is a means test in here and those people who apply would certainly have to be eligible and they would have to go to the veterinarian and the veterinarian has to make out some form of an application. It would have to be submitted to the state Veterinarian who would have to have two or three personnels investigate the means application, and then it goes back and the veterinarian can approve it, the job is done and then he bills the state Veterinarian's Office. It is a bureaucratic nightmare. Further, it still punishes the responsible to help the irresponsible. For that reason, we decided that this bill should go to study. I think that is what we should ultimately do. Thank you.

SENATOR BASS: I speak in opposition to the motion of ought to pass as amended with the present amendment. Technically the amendment improves the bill and perhaps we should vote for the amendment and against the motion of ought to pass. As Senator Heath has so articulately stated, there is a mountain of problems associated with the administration of this bill. If you turn to page

four, section II, it says "a resident of the state who owns a dog or cat and who is eligible for assistance under RSA 161 or RSA 167", which is sort of a passing reference to very large chapters, and just to satisfy my curiosity, a few minutes ago, I looked up chapter 161 and that is the elderly and adult services chapter and under Golden Granite State Discount Cards, eligibility for the card F23 says "Any resident of New Hampshire 60 years of age or older is eligible for a discount card as provided in this subdivision". So by not being specific about what sections of RSA 161 qualify you for this subsidy, if you are eligible for anything under 161. In effect, we would be having . . . there are a lot of other examples. We would be having all sorts of . . . half the population might be able to qualify. The intent of the bill is to provide some sort of subsidy for low income individuals to have companion pets and so forth to be able to get their pets spayed and neutered. I don't think that with the amendment enough money would be raised to spay or neuter any, even a small percentage of the request that would come in. There really isn't any mechanism in place for determining whether or not a request is really a bonafide request and it . . . for example, me giving my dog to my grandmother and asking her to bring it in and get it spayed or neutered. I had moved in committee for interim study and I still feel that that is a good idea. If you believe that we should be subsidizing low income peoples neutering or spaying of pets as a matter of public policy, then it is worth sending it to interim study. Once you cross that threshold, then there is a whole slew of administrative problems associated with this bill. I urge your defeat of the pending amendment.

SENATOR SHAHEEN: I would like to respond to a couple of the concerns that have been raised. First of all I would like to point out that on page two of the amendment, it provides for, including personnel costs for the state Veterinarian. If you look at how much money would be generated from this fund which has been one of the questions raised, there are approximately, 27,000 animals that are licensed each year at \$7 an animal. It amounts to about \$189,000 if you take out the amount that would be in the fund, which should provide all of the start up cost for this. In fact, when you raise the question about how can you determine who is appropriately on public assistance and who ought to qualify, private shelters already have a program like this in place that they have been operating. The way that they work it, is they, the people who are really going to make use of this fund are the people who have a real legitimate need. The public policy issue here is not whether we think the state should fund the adoption of animals to low income people. The public policy here is whether or not to control the animal population in this state.



What 400 and 403 do is provide a mechanism for us to control that animal population which provide over the long term, an increased cost to everybody in the state because we all pay the cost of having those animals destroyed.

SENATOR ROBERGE: Mr. Chairman and members of the Senate, it has been suggested that the raising of the licenser fees would be excessive. I want to speak to that. Presently, anyone is paying \$4.50 for a neutered animal. We would propose adjusting that to \$7 or \$14.50 for an unneutered for our new bill. Now that is a differential of only \$10. If you care to have your animal neutered, then you don't pay anything additional. The whole point of this is for people to neuter animals that they do not intend to breed. We want to stop the irresponsible breeding of animals. If you in fact are not in the breeding business or if you are going to breed a dog or whatever, and I know that Roger is very anxious to speak because he wants to breed one dog, one time, and he wants to keep four animals unneutered in the process. I am very familiar with the situation. He also has four dogs instead of five and you cannot get a group license. I just want to point that out, because I don't think that Senator Heath will point that out to the Senate.

SENATOR HEATH: Well originally I was going to ask a question, but I think that I should just speak for a second time and defend my dogs honor. I have three dogs, one of which I wouldn't breed, he is a knot-head. I have an old one whose day of breeding is gone by, and I have a daughter of that one who sometime before she goes out of the age when it is healthy to have her breed, I want a daughter or son from her. She is a fine hunting dog as her father was. That is my doggy situation and I don't know what it has to do with this. I noticed in my esteemed officemates speech that she talked about this amendment raising, almost doubling the fee of neutered animals. You said neutered animals and it seems to me that you don't punish an activity that you are trying to encourage by doubling it; nonetheless, the real question, the bottom line is, how are you going to do the bureaucratic morass that this half-baked bill creates? We all want to bring the animal population down, it is reasonable and responsible to. I know that Senator Shaheen feels very strongly about that and has supported the Humane Society, but this time they are operating three cords short of a four cord pile. I mean this is not good legislation and it would create among other things, a sort of a human service agency within the state Veterinarian's Office to determine who is eligible. I mean this is not the way to do it. This is not sane and rational, it doesn't need study, it needs long lengthy study, and then reconsideration after that.

SENATOR W. KING: Senator Heath, was is not true that there was not general agreement among all the parties that were involved in this thing that this bill should move forward?

SENATOR HEATH: Absolutely. I think that our state Veterinarian's Office, the veterinarians, I believe, on the whole, do not want it. I think the Commissioner of Agriculture does not want it. Essentially, the Humane Society wants it, but I don't know that anybody else does. The kennel operators do not want it, the Dog Breeders Association does not want it.

SENATOR W. KING: So it is fair to say 'well every dog ought to have his own day and this is barking up the wrong tree'?

SENATOR HEATH: Yeah.

Senator Bass moved the question.

Adopted.

Question is on the floor amendment.

A division vote is requested.

Yeas 13

Nays 7

Floor amendment is adopted.

Recess.

Out of recess.

Question is on third reading.

Division requested.

Yeas 12

Nays 10

Ordered to third reading.

**SB 403-LOCAL**, an act requiring that dogs and cats placed by shelters and pounds be spayed or neutered. Wildlife and Recreation committee. Ought to Pass. Senator Bass for the committee.

SENATOR BASS: Mr. President, this bill requires that dogs and cats be spayed that are being placed out of public or private humane shelters. Most humane societies already have a program for spaying or neutering dogs and cats, the problem is that others don't. Also there are ones that do offer vouchers and credits and so forth, but in many instances, these credits are not used by the individuals adopting the pets. All this bill really does is give some teeth, some enforcement to the humane societies and public dog and cat shelters to get the individuals who take these animals to do what they are suppose to do and that is to have them spayed or neutered.

Adopted.

Ordered to third reading.

**RESOLUTION**

**SR 1**, requesting an opinion of the justices concerning the constitutionality of SB 406. Senator Russman for the committee.

**SR 1****STATE OF NEW HAMPSHIRE**

In the year of Our Lord one thousand  
nine hundred and ninety-two

**A RESOLUTION**

requesting an opinion of the justices concerning  
the constitutionality of SB 406.

Whereas, there is pending in the Senate, Senate Bill 406, "An Act relative to penalties for second DWI offenses"; and

Whereas an amendment has been proposed to Senate Bill 406; and

Whereas, doubt has arisen as to the constitutionality of the provisions of said bill; and

Whereas, it is important that the question of the constitutionality of said provisions should be settled in advance of the enactment of SB 406; now, therefore, be it

Resolved by the Senate:

That the Justices of the Supreme Court be respectfully requested to give their opinion on the following questions of law:

1. Would reducing the possible maximum sentence to 180 days for a person charged with a second DWI complaint and eliminating the right to a jury trial for such persons as provided in section 1 of Senate Bill 406, as amended, violate Part I, Article 15 of the New Hampshire Constitution?

2. Would reducing the possible maximum sentence to 180 days for a person charged with a second DWI complaint and eliminating the right to a jury trial for such person, as provided in section 1 of Senate Bill 406, as amended, violate any provision of the New Hampshire Constitution?

That the clerk of the senate transmit copies of this resolution, SB 406, and the amendment to the Justices of the New Hampshire Supreme Court.

**4979L**

**Amendment to SB 406**

Amend 265:82-b, I(b)(1) as inserted by section 1 of the bill by replacing it with the following:

(b)(1) Upon conviction based upon a complaint which alleged that the person has had one or more prior convictions in this state or another state and were within the 7 years preceding the date of the

second or subsequent offense, be guilty of a misdemeanor and shall be sentenced upon conviction or at the end of the defendant's appeals period to a mandatory sentence of not less than 10 consecutive days of which 3 consecutive 24-hour periods shall be served in the county house of corrections and 7 consecutive 24-hour periods shall be served at the state operated multiple DWI offender intervention detention center within 21 days after conviction or at the end of the defendant's appeals period. **Upon conviction based upon a complaint which alleged that the person had one prior conviction in this state or another state and was within the 7 years preceding the date of the second offense he shall be sentenced upon conviction or at the end of the defendant's appeals period to a mandatory sentence of not more than 180 days, provided, however, that the state, prior to or at the time of arraignment, may seek a sentence of not more than one year. Trial by jury shall not be afforded any person for any complaint under this subparagraph in which the maximum sentence is not more than 180 days.** In addition, the defendant shall be fined not less than \$500 and not more than \$1,000 which shall be paid to the clerk of court. In such circumstances where the multiple DWI offender intervention detention center has no available space, he shall be assigned the first available space.

### AMENDED ANALYSIS

This bill limits the possible incarceration of a person convicted of a second DWI offense to 180 days unless the state, prior to, or at the time of arraignment, seeks a sentence of one year. This bill also eliminates trial by jury for cases in which the maximum sentence is not more than 180 days.

SENATOR RUSSMAN: Mr. President and members of the Senate, SR 1 sends to the Supreme Court, questions that the committee has on SB 406 and has a proposed amendment to the bill. SB 406 is presently on the table and it is the intention of the committee to wait for the courts answer before we do any further action on the bill. The title of 406, relative to the penalties for second offense DWI offenses. What this simply does is, we had to phrase the question to send it over to the Supreme Court relative to whether to reduce the sentencing from one year to 180 day potential in order to do away with a jury trial, an effort to save the state money. So for the DWI situations that arise, the maximum penalty would be 180 days and the question needs to be answered before we do this, will it in fact be constitutional to do away with a jury trial if that happens? So the Supreme Court needs to answer. It will stay on the table until the answer comes back and we will vote on it on a later date. We will

vote on it either way, but assuming the answer is in the affirmative, hopefully, we will take favorable action on it. This was unanimously supported by the Judiciary committee.

**SENATOR HEATH:** Senator Russman, is the purpose of doing away with the jury trial just to save the expenses of the jury trial or does it save indigent defense cost?

**SENATOR RUSSMAN:** It will save both.

**SENATOR HEATH:** Even if it is 180 days, indigent defense cost would be saved?

**SENATOR RUSSMAN:** Well let me say this, that they won't qualify for a trial by jury which tends to take longer periods of time, but they would still be entitled to counsel because there is the potential for incarceration, but it won't take as long to try and it won't take as long.

**SENATOR HEATH:** Charges would be reduced in the end?

**SENATOR RUSSMAN:** Yes, they should be.

SR 1 is adopted.

### **TAKEN OFF THE TABLE**

Senator Humphrey moved to have CACR 29 an act Relating To: the governor's veto power. Providing That: the governor shall have line item reduction and line item veto power of items in any bill making appropriations of money taken off the table.

Adopted.

**CACR 29**, an act Relating To: the governor's veto power. Providing That: the governor shall have line item reduction and line item veto power of items in any bill making appropriations of money.

### **SUBSTITUTE MOTION**

Senator Humphrey moved ought to pass.

Adopted.

**SENATOR HUMPHREY:** I offer this floor amendment which has been distributed, #5090L. Mr. President, again I want to thank my colleagues for their courtesy a couple of hours ago in permitting this resolution to be tabled in order that an amendment might be drafted that corrected a major flaw in the original draft which was inserted by some phantom person whose identity has not been discovered. But nonetheless, the problem has been fixed, at least that problem, others might have a generic problem with line item veto, but this is the resolution that would amend the Constitution to give to the Gov-

error of the state of New Hampshire that authority which 43 governors have, including if you can believe it, the Governor of Massachusetts. This is a very effective tool used by Governors to trim, ever so selectively, lines of appropriations from budgets. The language which I am offering here is not only line item veto, a line item veto being all or nothing, but line reduction authority, which gives the Governor the authority to adjust lines, not simply to strike them out completely. Mr. President, a study done by Doctor Mark Crane of the Center for Study of Public Choice at George Mason University and James C. Miller, former director of the Office of Budget and Management, found that Governors with line item reduction authority, such as being offered here, were able to cut spending on average by 2.7 per biennium. That is 1.35 percent per year. I think these statistics show that Governors do not use line item vetoes and line reduction authority like a meat axe. Instead the record indicates that such authority is used carefully and selectively. Forty-three governors have it, our governor does not have it. In my view, our governor should have it, the office of our governor should have it and I urge my colleagues to support CACR 29.

Senator Humphrey offered a floor amendment.

5090L

### Floor Amendment to CACR 29

Amend the resolution by replacing all after the resolving clause with the following:

I. That part second of the constitution be amended by inserting after article 44 the following new article:

[Art.] 44-a. [Line Item Veto to Appropriations Bills.] No bill shall become a law after the final adjournment of the legislature, unless approved by the governor within 5 days after such adjournment. The governor shall have power to disapprove or reduce any item or items in whole or in part of any bill making appropriations of money, and the part or parts of the bill approved shall be the law, and the item or items of appropriation disapproved shall be void, unless reached according to the rules and limitations prescribed for the passage of other bills, over the executive veto. Every order, resolution, or vote to which the concurrence of both houses of the legislature may be necessary, except on a question of adjournment, shall be presented to the governor, and before the same shall take effect be approved by him, or being disapproved by him, shall be repassed by 2/3 of all the members elected to each house of the legislature, according to the rules and limitations prescribed in the case of a bill. Every order and resolution to which the concurrence of both houses of the legislature may be necessary, except on a question of adjourn-

ment and those matters dealing solely with the internal or administrative affairs of the legislature, shall be presented to the governor, and before the same shall take effect be approved by him, or being disapproved by him, shall be repassed by 2/3 of all the members elected to each house of the legislature, according to the rules and limitations prescribed in this article.

II. That the above amendment proposed to the constitution be submitted to the qualified voters of the state at the state general election to be held in November, 1992.

III. That the selectmen of all towns, cities, wards and places in the state are directed to insert in their warrants for the said 1992 election an article to the following effect: To decide whether the amendments of the constitution proposed by the 1992 session of the general court shall be approved.

IV. That the wording of the question put to the qualified voters shall be:

Are you in favor of amending the Constitution to provide the governor with line item reduction and line item veto power of items in any bill making appropriations of money?

V. That the secretary of state shall print the question to be submitted on a separate ballot or on the same ballot with other constitutional questions. The ballot containing the question shall include 2 squares next to the question allowing the voter to vote "Yes" or "No." If no cross is made in either of the squares, the ballot shall not be counted on the question. The outside of the ballot shall be the same as the regular official ballot except that the words "Questions Relating to Constitutional Amendments proposed by the 1992 General Court" shall be printed in bold type at the top of the ballot.

VI. That if the proposed amendment is approved by 2/3 of those voting on the amendment, it becomes effective when the governor proclaims its adoption.

SENATOR MCLANE: Senator Humphrey, I am just wondering if this is any sort of announcement or declaration that you are running for Governor?

SENATOR HUMPHREY: Well if you pass it, I might consider it.

SENATOR DUPONT: Thank you, Mr. President and members of the Senate. A while ago we debated the biennial session question and what we talked about in that bill was the ability of this citizen legislature to make good decisions for the state of New Hampshire. What you have before you is a piece of legislation that will weaken the effectiveness of this legislature. As all of you know I spent four years on Finance and I have taken a particular interest in the whole appropriating process. I also served on the Fiscal committee and I

think that I speak with some expertise about the state of New Hampshire's budget. One of the things that always comes through loud and clear about this process is that if a Governor wants to participate in the process, he can participate. The process that we have forces the Governor to come out of his office and work with us. You may ask why that is so important. During the Sununu days, he was accused of running the Senate and running the legislature, but we always knew where the Governor was, we always knew that if there was an issue of public policy that, ultimately, we all got dragged into his office to talk about it. That is the important part of bringing a Governor into this process, because he is management, he or she is the individual, if we ever get to that point. The person who takes the policy that we pass in this body and makes it work, particularly as it applies to how our state government runs. I mention that because a good governor doesn't need this. A good governor will come out of his office, work with the legislature in dealing with his budget, because in the end what we are dealing with when we go through the appropriating process is a budget that has been put forward by the Governor's Office. I want to just bring a couple of things to the attention of this body. A few years ago, you all heard a debate that I participated in about building a regional Vocational system over in my area. It is built, they have been open, they are in place right now educating displaced workers. One of the things that we did in this body was talk about how we use our vocational system as a way not only to just educate our high school students, but also, to educate those individuals who find themselves out of work and find a job. We have had a Governor who didn't believe in our vocational system, who in fact, I argued with for several years over whether or not we should continue to invest in our vocational system. What you are allowing with this piece of legislation is to allow the Governor to go in and pick the little pieces out that whether for good reason or not, he ultimately decides that he doesn't like. We all have been through this process, we have all debated and argued with Governors over whether or not everything in an appropriating bill is in fact important. This is not about taking the little pieces out that we might label as pork, this is about taking a look at how this process works, the efforts that we, as legislatures put into the process and even more damaging, we have gone through Governors budgets in the past and seen underfunded sections and overfunded sections. What you are going to allow with this process is to let a Governor go in, in a particular area where he may determine that he doesn't like our numbers, doesn't like the program and reduce the appropriation to \$1. As you all know there may be times where we have things before this body that are 13 to 11, so we are not going to get a 2/3rds vote on everything that comes through in terms of the appropriating process. But



the fact of the matter is, that this is a significant shift of the authority of this legislature into the Governor's Office. If you support that, then you vote for this. But I can't in good faith stand here as a legislator who represents 40,000 plus people in my district and want to give up some of the ability that I have to impact how this process works over here. So I would urge my colleagues to think very seriously about this legislation, the impact that it has on your own job, the impact that it will have on the Governors of this state who will suddenly find themselves in a position where they can sit in the corner office, not participate in the process, not participate in the debate, not participate with our staff in helping them move good legislation through the body and then sit in there and with one nick of the pen, be able to take all that whole process and set it all to one side. This is bad public policy.

SENATOR HEATH: Senator Dupont, this may not advance the argument, probably doesn't advance the argument, but I am just terribly curious. I would swear that one time back when we were young and you and St. Jean looked very much alike and were thought of as two of the three musketeers . . .

SENATOR DUPONT: I shaved my mustache at that time because everyone kept getting us mixed up. I had to save my reputation as a married man.

SENATOR HEATH: Well you know how long ago it was that I am talking about then?

SENATOR DUPONT: Yes, it was 1984 or 85, I remember.

SENATOR HEATH: I would have sworn that I had a discussion with you and that you thought that the line item veto was a wonderful thing. Is my memory gone that far, am I that advanced?

SENATOR DUPONT: Senator, I would just add that back in my early days as we all do when we start this process, we don't have a good understanding of how government works. It is an educational process that we go through. I am an individual who is very concerned with the balance of power that exist between a Governor and a legislature. As you know we have had discussions about when you put legislation in place, you don't always plan on who is going to be sitting in that seat the next time around. If you try to bring the balance from the prospective of not the individual who is sitting there, but whether or not the process itself is designed in a way that accommodates whatever turns out to be people who are either managing state government or sitting in the Governor's Office or sitting in this chamber. So I will just add to you that as we know and with no criticism of any Governor that has been here, that their styles of

working with this legislature have gone from being very involved in the past years, to being less involved, to being not involved. That is not a criticism, that is a question of the style of the Governor that sits there. All that I have said is that it is healthy for that Governor to participate in this process because I think that the legislature has improved as a result of that. You and I both know from past experiences, that many times things go through this process and the Governor's Office does in fact point out things that we have done wrong, that is healthy, but to answer your question, I may have at one time, been in support of a line item veto. It was before I spent four hard and long years on Senate Finance, it was before I matured as a legislator, so to speak. I feel very strongly at this point, that it would be bad for this legislature to allow this to happen.

SENATOR HEATH: Senator Hough, did you give this to Eddy?

SENATOR HOUGH: Is that your question?

SENATOR HEATH: Yes.

SENATOR HOUGH: I will answer the question and I won't have to speak. I will tell you, Senator Heath, with all seriousness, that Senator Dupont voted wrong a few hours ago on annual sessions, but he has seen the errors of his ways and he now opposes a piece of legislation that has no business being even entertained. Were we to have line item veto in the state of New Hampshire, and I mean this very seriously and I do not say these words in jest. There would be a number of people who have given countless hours of good public service in this public legislature that no longer would be willing, because what you would be doing is taking away the opportunity for the people to be involved in their state government and putting too much power in an executive, regardless of who he or she may be, and the peoples business would not be served with a line item veto. In effect, the way that we budget in this state involves input from 400 people on the other side of the wall and 24 members of this body as well as a hard analysis with the members of all of the executive branches of government. To allow a chief executive to cut and paste would be a great disservice and make the legislature, talk about spayed and neutered animals, that is your answer. We should never entertain it.

SENATOR DELAHUNTY: Senator Dupont, I would like to ask you a similar question as Senator McLane asked to Senator Humphrey a while ago. I am certain that you probably have given no consideration whatsoever to the gubernatorial race that might be coming up and I just wondered if you should, sometime along the way, consider that, and you were successful, how would you feel about having the line item veto that you have seen here?

SENATOR DUPONT: Senator, thank you for the question. I would add that I have always had a problem as I have been involved in this process with the use of the veto stamp as a way of government. Clearly it, at times is necessary because of the inability of a chief executive to interact with the legislature. As you know, I have been accused of being someone that tries too hard to find the middle on issues. I think that as a legislator, that I have always made sure that I do my homework, I listen to what the executive branch has to say and consider that in my deliberations. Quite frankly, again, I will get back to my original premise, I don't think that it matters who is sitting in that chair, what matters is whether or not this legislature wants to give away one of the tools that it has in terms of making sure that public policy, someone referenced earlier that a number of other states have it, but I would add that in fact you cannot compare this legislative process to any other state, it is unique, the size of it is unique, the fact that we are citizen legislators is unique and those comparisons don't wash with me. This is a very fundamental issue that affects the ability of this body and the body on the other side of the wall to make sure that good public policy gets put in place. I have seen that before and the threat of a veto is something that drives a legislative process in the wrong way. It discourages debate rather than encouraging it and I think that the use of it should be very deliberative and not carelessly used. That would apply whether I was sitting in the Governor's seat or any other member of this body. I think if you bring that legislative perspective in there with you when you go in there, then you will understand why I feel so opposed to this piece of legislation.

SENATOR DELAHUNTY: That was a very good answer. I thank you.

SENATOR OLESON: Senator Dupont, in a certain newspaper that we are all familiar with has a certain term that occurs from time to time as our neighboring state is accused of taxachusetts, I think. Now seeing that Governor has that certain power that our Governor doesn't, doesn't that mean to you just because he has that power that doesn't necessarily mean that there is a reduction and an unnecessary spending?

SENATOR DUPONT: Senator, I think that this legislature has acted very judiciously in the past when it comes to expending our citizens funds and while I am sure that you can find some specific instances where we might all disagree with how we appropriated in the past, Massachusetts does have a line item veto and clearly it is not impacted with the growth of spending in that state. I think again that it goes back to the whole question of whether or not you are

going to move a chief executive to participate in the process or ask him to withdraw. I think the very reason why we have had a state that has had such good control of the budget process is that it has involved both the Governor's Office and the legislative branch in that process and they have all been able to sit down at the table and work together towards putting together our budgets.

SENATOR J. KING: I rise in strong opposition to giving any more power of the legislature to the executive branch. There was a reason for making a few branches and there was a reason for giving the power to each of those two branches to use and to use in a very wise manner. As far as giving the veto power and the line, he has the veto power. He has it on any bill that we pass, we don't need to give him anymore veto power. I think the current Governor, I don't think that any of the vetoes he has done, have remained sustained. I don't think that he has been overridden on any veto at all. He has it whether it is the budget, whether it is a cat and dog bill or whatever it might be and that is what makes good government. He vetoes it and he has to come back and tell us the reason why. If he can convince us, then it becomes a better bill, then we will change it. I would in no way want to go along with giving our powers away.

SENATOR HEATH: The reason that we made our Governor a weak Governor in this system was because the Governor used to be appointed. We became very suspicious of Governors because we didn't get a chance to elect them, and that continued on. But constitutionally what we did to Governors and we paid them an enormous amount of money, and he sits over in his office like the Maytag repair man. Listen, what we have done in law is further pull his duties away and disallow him to have an effect on the state. I think that it has become unhealthy. I don't understand why, if you people really believe that you know, render under Caesar what is Caesars, why you don't believe what is Caesars is his, when you are protecting your own turf. You protect your own turf and say that you don't want a line item veto, then why do you set up Senate Finance committees that approach on the executive? Why do we continue, and we have over the years, encroached on executive fiats, through law. If some of these were challenged in courts, if we had a Governor who was willing to affront the legislature enough to do the right thing and challenge some of these, they would be rolled back as they have in this state and in other states. We don't allow the Governor to name his own team. We don't allow him to bring heads of agencies in concurrence with him and then we hold him responsible. I don't know how you can hold a Governor responsible for anything if you don't allow him to do anything. Over the years in some cases, that may have been the best thing and other cases it isn't. But overall, there

ought to be some balance for the executive branch to have an impact, either that make him the \$100 a year man and pay us to come down here and waste our lives away. The line item veto isn't something that is going to be depreciatively used. Every veto is an affront to the legislative body. It is a natural affront, that is what controls Governors from just sitting there and vetoing everything that they don't like. It says in spite of the majority, I don't like it, go back and do it over again and this time it is a higher test. They are not going to do that and if they do it, they get carried away and the body will be going to react instantly, and prohibit it. It is a way to get rid of some of this foolishness that we trade around here or we ignore because we like old sam, so we let him have his piece of pork and you know, we all kind of conspire in silence and slap it in and the good ole boys that sit down there in Finance, they're the quintessential hidiers of special pork, I guess . . .

SENATOR HOUGH: Now you're getting nasty, Roger.

SENATOR HEATH: Anyway, it is a good way to attempt to balance real interest and to give the executive something to do besides sit over there and twiddle his thumbs. It is also a way to help control some spending that we don't seem to be able to do. I say that if you defeat this, which you are probably going to, you ought to at least consider out of the Governor's turf with some of the encroachments that we have done through Joint Senate and House committees that over the years have reached in after we leave the legislation, to revisit the legislation and move monies and personnel around among agencies.

Senator Russman moved the question.

Adopted.

Question is on Senator Humphrey's floor amendment.

A roll call was requested by Senator Humphrey.

Seconded by Senator Colantuono.

Recess.

Out of recess.

The following Senators voted yes: Heath, Currier, Bass, Colantuono, Humphrey.

The following Senators voted no: Oleson, W. King, Fraser, Hough, Dupont, Disnard, Roberge, Pressly, Nelson, McLane, Podles, J. King, Russman, Shaheen, Delahunty, Hollingworth, Cohen.

Yeas 5

Nays 17

Floor amendment fails.

Question is on the committee report of inexpedient to legislate.

A 3/5th vote is required.

A 3/5th vote is not acquired.

CACR 29 is inexpedient to legislate.

Senator Podles moved to adjourn.

Motion to adjourn fails.

### **TAKEN OFF THE TABLE**

Senator Shaheen moved to have SB 326-FN an act relative to the Lamprey solid waste district taken off the table.

Adopted.

**SB 326-FN**, an act relative to the Lamprey solid waste district. Environment committee. Ought to Pass with Amendment. Senator W. King for the committee.

Recess.

Senator Dupont in the Chair.

**4754L**

### **Amendment to SB 326-FN**

Amend the title of the bill by replacing it with the following:

#### **AN ACT**

relative to the Lamprey solid waste district.

Amend the bill by replacing all after the enacting clause with the following:

1 Authorization; Lamprey Cooperative. The Lamprey regional solid waste cooperative as legalized by 1979, 8:1, is authorized to borrow funds if at least 9 of the 13 member communities of the cooperative vote to extend their membership in the Lamprey regional solid waste cooperative until June 30, 1996, of up to an amount of \$500,000 for the purpose of expanding the solid waste landfill located in the city of Somersworth. Such borrowing may be authorized by a vote of the joint board of the Lamprey regional solid waste cooperative.

2 Bond Authorization. The Lamprey regional solid waste cooperative is authorized to issue municipal bonds in an amount not to exceed \$500,000 for the purposes of section 1 of this act. The term of such bonds shall not exceed 5 years. Principal and interest payments on the bonds shall be paid when due from the revenues of the cooperative. Such bonds may be authorized by a vote of the joint board of the cooperative without a vote of the member communities.

3 Effective Date. This act shall take effect July 1, 1992.

### AMENDED ANALYSIS

This bill authorizes the Lamprey solid waste cooperative to borrow up to \$500,000 to expand the solid waste landfill if at least 9 of the 13 member communities of the cooperative vote to extend their membership in the Lamprey regional solid waste cooperative until June 30, 1996. Bonds may be authorized by a vote of the joint board of the cooperative, without a vote of the member communities.

SENATOR W. KING: We encourage you to adopt the committee amendment and then adopt the report.

Committee amendment adopted.

SENATOR SHAHEEN: Just for the information of the Senate, the amendment makes two changes in the committee amendment and they are both being done to accommodate the board of the Lamprey Solid Waste Cooperative. The first is that a 2/3rds vote be required for passing any bonding issue. The second would provide that any member who drops out of the cooperative would not be liable for payment of the \$500 bonding which is what the original amendment included, beyond the date that they withdraw from the cooperative. I urge the Senate to pass this.

Senator Shaheen offers a floor amendment.

4997L

### Floor Amendment to SB 326-FN

Amend the bill by replacing section 1 with the following:

1 Authorization; Lamprey Cooperative. The Lamprey regional solid waste cooperative as legalized by 1979, 8:1, is authorized to borrow funds if at least 9 of the 13 member communities of the cooperative vote to extend their membership in the Lamprey regional solid waste cooperative until June 30, 1996, of up to an amount of \$500,000 for the purpose of expanding the solid waste landfill located in the city of Somersworth. Such borrowing may be authorized by a 2/3 vote of all the joint board members of the cooperative without a vote of the member communities. Any member community which votes not to continue as a member of the cooperative beyond June 1993, shall not be liable for any principal and interest payments that are authorized by this legislation upon the effective date of the community's withdrawal from the cooperative.

### AMENDED ANALYSIS

This bill authorizes the Lamprey solid waste cooperative to borrow up to \$500,000 to expand the solid waste landfill if at least 9 of the 13 member communities of the cooperative vote to extend their

membership in the Lamprey regional solid waste cooperative until June 30, 1996. Bonds may be authorized by a vote of 2/3 of the joint board members of the cooperative, provided that any member community may vote to withdraw from the cooperative effective June 1993 and not be liable for any loan principal or interest payments.

Floor amendment adopted.

Ordered to third reading.

### **REPORT OF COMMITTEE ON ENROLLED BILLS**

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House Bill:

**HB 1053**, relative to state revenues and expenditures.

### **TAKEN OFF THE TABLE.**

Senator W. King moved that we have SB 412-FN-L an act relative to signage by nonprofit organizations in zoned commercial or industrial areas taken off the table.

Recess.

Out of recess.

Adopted.

### **LAID ON THE TABLE**

Senator Currier moved that we have SB 412-FN-L an act relative to signage by nonprofit organizations in zoned commercial or industrial areas laid on the table.

Adopted.

**SB 412-FN-L** is laid on the table.

### **ANNOUNCEMENTS**

#### **RESOLUTION**

Senator Delahunty moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that the bills ordered to third reading be read a third time by this resolution, all titles be the same as adopted and that they be passed at the present; and that when we adjourn, we adjourn to Thursday, February 20, 1992 at 1:00 p.m.

Adopted.

Senator Currier moved that we adjourn until Thursday, February 20, 1992 at 1:00 p.m.



**LATE SESSION****Third Reading and Final Passage**

**SB 300**, an act reapportioning the New Hampshire congressional districts.

**SB 326-FN**, an act relative to the Lamprey solid waste district.

**SB 343**, an act relative to reconsideration of town meeting and school district meeting votes.

**SB 348**, an act establishing a committee to study the present and future needs of the correctional system.

**SB 380**, an act relative to membership on planning boards in towns with the town council form of government.

**SB 385**, an act to provide insurance coverage for court-ordered psychiatric and psychological services.

**SB 391**, an act relative to the use of surplus campaign funds by candidates for state office.

**SB 399-FN-LOCAL**, an act requiring rabies shots for cats.

**SB 400-FN-A-LOCAL**, an act requiring fees in addition to licensure fees for dogs which are not spayed or neutered and using the increase to fund a state animal population control program and continually appropriating the companion animal population control fund.

**SB 403-LOCAL**, an act requiring that dogs and cats placed by shelters and pounds be spayed or neutered.

**SB 420-FN**, an act relative to interviewing children under the provisions of the Child Protection Act.

**SB 457-FN**, an act relative to sale of beverages by beverage manufacturers.

**SB 472-FN**, an act relative to the victims' assistance fund and modifying sexual assault statutes and continuing a study committee.

**SB 474-FN**, an act relative to regular sessions of a district court in towns within the district.

**HB 1370**, an act to provide rotating 4-year county commissioner terms in Rockingham county.

Senator Currier moved that we adjourn.

Adopted.

Adjournment.

*February 20, 1992*

The Senate met at 1:00 p.m.

A quorum was present.

The prayer was offered by the Rev. Dawn Berry, Senate guest Chaplain.

*Creator God, as the light of day lengthens and the thick mud is a sign of thaw, our spirits are set yearning for the possibilities of spring. Seed catalogs find their place among the pages of committee reports still to be studied, and we are a people waiting for spring's renewal. Even on this February day, possibilities await their time as these Senators go about their work. Remind them of the yearnings of constituents, not only for your spring, but for economic renewal. Set before them the personal stories of need to which they can respond and after long hours of debate and the loneliness of decision-making, embrace these Senators with you caring presence and the gratitude of the people they are elected to serve, that they in turn may appreciate each other.* Amen

Senator Hollingworth led the Pledge of Allegiance.

## INTRODUCTIONS

## COMMITTEE REPORTS

## NOTICE OF RECONSIDERATION

Senator Dupont served notice of reconsideration on SB 300 an act reapportioning the New Hampshire congressional districts. Internal Affairs committee.

## NOTICE OF RECONSIDERATION

Senator Podles served notice of reconsideration on SB 457-FN an act relative to sale of beverages by beverage manufacturers. Ways and Means committee.

Adopted.

**SB 373**, an act allowing the filing of the ULOR-C form for Rule 504 securities offerings in New Hampshire. Banks committee. Ought to Pass. Senator Fraser for the committee.

Tape inaudible.

Adopted.

Referred to Economic Development committee (Rule #24).

**SB 384**, an act relative to foreclosures and sale of mortgaged property. Banks committee. Ought to Pass with Amendment. Senator Fraser for the committee.

5070L

**Amendment to SB 384**

Amend the bill by replacing all after the enacting clause with the following:

1 Sale Under the Power. Amend RSA 479:25, II to read as follows:

II. A copy of said notice shall be served upon **or sent by registered or certified mail to the last known address of** the mortgagor [or sent by registered or certified mail to his last known address or to such person as may be agreed upon in the mortgage] **or to such person as may be agreed upon in the mortgage, and any grantee, assignee, devisee or heir of the mortgagor holding a recorded interest in the mortgaged premises subordinate to the lien of the mortgage,** at least 25 days before the sale[. The term "mortgagor" shall include the mortgagor and any grantee, assignee, devisee or heir of the mortgagor holding a recorded interest in the mortgaged premises subordinate to the lien of the mortgage, provided that such interest is recorded, at least 30 days before the date of the sale, in the registry of deeds for the county in which the mortgaged premises are situated] **provided that such interest is recorded, at least 30 days before the date of the sale, calculated by excluding the date of sale, in the registry of deeds for the county in which the mortgaged premises are situated.** Like notice shall be sent to any person having a lien of record on the mortgaged premises, provided that the lien is recorded at least 30 days before the date of the sale, **calculated by excluding the date of sale,** in the registry of deeds. The notice shall be sent not less than [21] **23** days before the sale, **calculated by excluding the date of sale.** Such notice of sale shall be sufficient if it fully sets forth the date, time, and place of sale; the town, county, street or highway and street number; if any, of the mortgaged premises; the date of the mortgage; the volume and page of the recording of the mortgage; and the terms of the sale. Any mortgagor or record lienholder who refuses to accept or claim mailed or served notice or who frustrates attempts by the mortgagee to give notice of the sale by failing to give or leave a forwarding address or by other act or omission shall be deemed to be notified of the sale, provided that such mortgagee shall have made a good faith effort to provide such notice. Notice of the sale as served on or mailed to the mortgagor shall include the following language: "You are hereby notified that you have a right to petition the superior court for the county in which the mortgaged premises are situated, with service upon the mortgagee, and upon such bond as the court may require, to enjoin the scheduled foreclosure sale.["] Failure to institute such petition and complete service upon the foreclosing

party, or his agent, conducting the sale prior to the sale shall thereafter bar any action or right of action of the mortgagor based on the validity of the foreclosure.”

2 New Paragraph; Notice of Sale. Amend RSA 479:25 by inserting after paragraph II-a the following new paragraph:

II-b. The person selling pursuant to the power, at least 25 days prior to the day of sale, shall send by registered mail to the mortgagor or the mortgagor's successor as mortgagor as reflected in the records of the registry of deeds, a copy of a recent appraisal and a form by which the mortgagor may inform the mortgagee of a future address for purposes of compliance with RSA 479:26-a.

3 New Section; Notice of Outcome of Sale. Amend RSA 479 by inserting after section 26 the following new section:

479:26-a Notice of Outcome of Sale. The person selling pursuant to the power shall within 60 days after the sale mail to the mortgagor at his last known address by registered or certified mail, the following information: the date and time the sale was held, the name and address of the purchaser at the sale, the sale price, an itemization of the mortgagee's claims to the proceeds, an itemization of how the sale proceeds were distributed, and a statement that any excess proceeds after payment of all lienholder's claims may be turned over to the mortgagor.

4 New Section; Disclosure Requirements for Mortgages. Amend RSA 477 by inserting after section 29 the following new section:

477:29-a Disclosure Requirements for Mortgages. All mortgage deeds shall contain the conditions of default which may result in foreclosure.

5 Effective Date. This act shall take effect January 1, 1993.

### AMENDED ANALYSIS

This bill establishes new notice requirements regarding foreclosure sales.

The bill also requires mortgage deeds to contain the conditions of default which may result in foreclosure.

Tape inaudible.

Committee amendment adopted.

Ordered to third reading.

**SB 322**, an act limiting the advertising expenses of public utilities which may be included in the calculation of rates and establishing a long range energy policy committee. Economic Development committee. Ought to Pass with Amendment. Senator Hollingworth for the committee.

5078L

**Amendment to SB 322**

Amend the title of the bill by replacing it with the following:

**AN ACT**

establishing a committee to study the effectiveness of  
the laws decommissioning nuclear power plants.

Amend the bill by replacing all after the enacting clause with the following:

1 Committee Established. There is established a committee to study the effectiveness and adequacy of the laws regulating the decommissioning of nuclear power plants. The committee shall consist of the following members:

I. Two senators, one of whom shall represent the district where a nuclear power plant is located, appointed by the senate president.

II. Two members of the house, who shall be the chair and the ranking minority member of the house committee on science, technology and energy.

III. The director of the office of state planning, or designee.

IV. The director of public health services, or designee.

V. A member of the nuclear decommissioning financing committee established pursuant to RSA 162-F:15, who shall be the member representing the municipality where a nuclear power plant is located, appointed by the governor.

VI. The state treasurer, or designee.

VII. A public member residing in the municipality in which the facility is located, appointed by the governor.

2 Meetings; Compensation. The chair of the committee shall be chosen by the members at the first meeting. The members of the committee shall serve without compensation, except that the legislative members shall receive mileage at the legislative rate when attending to the duties of the committee. The first senate-appointed member shall call the first meeting prior to July 15, 1992.

3 Scope of Review. The committee shall address the following:

I. Changes in the federal law since the nuclear decommissioning financing committee was established.

II. The structure of the nuclear decommissioning financing committee.

III. Guidelines for the investment of decommissioning trust funds.

IV. Legislation necessary to protect taxpayers and ratepayers in the event of decommissioning.

V. Issues and concerns raised by the community where a nuclear power plant is located.

4 Report. The committee shall make a report on its findings and shall submit recommendations for legislation for the 1993 session concerning the decommissioning of nuclear power plants to the governor, the senate president, and the speaker of the house on or before November 1, 1992.

5 Effective Date. This act shall take effect upon its passage.

### AMENDED ANALYSIS

This bill establishes a committee to review the effectiveness and adequacy of the current laws regulating the decommissioning of nuclear power plants.

The committee shall submit its report along with recommendations for legislation to the governor, the senate president, and the speaker of the house on or before November 1, 1992.

Tape inaudible.

Committee amendment adopted.

Ordered to third reading.

**SB 419-FN**, an act relative to a parental choice in education program. Education committee. Inexpedient to Legislate. Senator Disnard for the committee.

Tape inaudible.

### SUBSTITUTE MOTION

Senator Heath moved to have **SB 419-FN** an act relative to a parental choice in education program laid on the table.

Tape inaudible.

Senator Blaisdell moved the question.

Adopted.

Question is on the tabling motion.

Adopted.

**SB 419-FN** is laid on the table.

**SB 325**, an act encouraging water companies to work with municipal customers to develop water conservation measures prior to the imposition of rate increases. Environment committee. Inexpedient to Legislate. Senator Russman for the committee.

Tape inaudible.

Committee report adopted.

**SB 332**, an act authorizing a municipality to issue bonds to pay the costs of the cleanup of superfund hazardous waste sites. Environment committee. Ought to Pass. Senator Shaheen for the committee.

Recess.

Senator Russman in the Chair.

Tape inaudible.

Referred to Economic Development committee (Rule #24).

**SB 428-FN**, an act designating segments of the Connecticut River for the rivers management program. Environment committee. Ought to Pass with Amendment. Senator W. King for the committee.

5049L

### **Amendment to SB 428-FN**

Amend the title of the bill by replacing it with the following:

#### **AN ACT**

designating segments of the Connecticut River for the rivers management program and allowing existing hydroelectric facilities to maintain operations.

Amend RSA 483:15, VIII(i) and (j) as inserted by section 1 of the bill by replacing them with the following:

(i) As a rural river from Leach Creek to Paul Stream in Brunswick, Vermont.

(j) As a natural river from Paul to the Maidstone-Stratford Bridge.

Amend RSA 483:15, VIII(l) as inserted by section 1 of the bill by replacing it with the following:

(l) As a community river from one mile above the breached Wyoming Valley Dam site to a point one mile below the Wyoming Valley Dam Site.

Amend the bill by inserting after section 2 the following and re-numbering the original section 3 to read as 4:

3 Continued Operation of Existing Hydroelectric Facilities. Amend RSA 483:12-b to read as follows:

483:12-b Subject to Other Laws; **Existing Hydroelectric Facilities.**

**I.** Any activities permitted under this chapter shall be subject to all applicable state and federal laws and regulations.

**II. Nothing in this chapter shall prohibit the continued operation, repair and maintenance of hydroelectric storage and generation facilities existing on the effective date of this paragraph.**

### **AMENDED ANALYSIS**

This bill nominates the Connecticut River for protection under the New Hampshire rivers management and protection program and permits the continued operation of hydroelectric facilities.

Tape inaudible.

Senator Blaisdell moved the question.

Adopted.

Committee amendment adopted.

Ordered to third reading.

Recess.

Senator Dupont in the Chair.

**SB 439-FN**, an act relative to the maximum contaminant levels allowed in public water systems and prohibiting permits to be issued for any well to be drilled within a 3-mile radius of any superfund or hazardous waste site. Environment committee. Inexpedient to Legislate. Senator Hollingworth for the committee.

Tape inaudible.

Committee report of inexpedient to legislate is adopted.

**SB 440-FN**, an act establishing a statewide water conservation program. Environment committee. Ought to Pass with Amendment. Senator Fraser for the committee.

**5059L**

### **Amendment to SB 440-FN**

Amend the bill by replacing section 1 of the bill with the following:  
1 New Section; Water Conservation Strategy. Amend RSA 485 by inserting after section 16 the following new section:

485:16-a Water Conservation Strategy. All community public water suppliers may submit a water conservation strategy to the department of environmental services, division of water supply and pollution control. If submitted, the strategy shall be submitted no later than July 1, 1993. Each strategy shall address the following:

I. The establishment of an on-going meter installation program. This program shall include a plan for the testing, recalibration, repair or replacement of meters.



II. An on-going leak detection and repair program to ensure that the amount of unaccountable water will be minimized.

III. Measures to implement an on-going public education, information, and participation program in an effort to educate and inform the public about the proper and efficient use of water resources. This program shall include information to assist consumers in decreasing and minimizing consumption.

### AMENDED ANALYSIS

This bill establishes an optional water conservation strategy program for community water suppliers. The strategy includes measures to reduce waste and requires participating suppliers of community water to establish an on-going public education program to inform the public about the proper and efficient use of water resources.

Tape inaudible.

Committee amendment adopted.

Tape inaudible.

Senator Cohen offered a floor amendment.

5127L

### Floor Amendment to SB 440-FN

Amend the title of the bill by replacing it with the following:

#### AN ACT

relative to water conservation strategy  
for community water suppliers.

Amend the bill by replacing section 1 of the bill with the following:

1 New Section; Water Conservation Strategy. Amend RSA 485 by inserting after section 16 the following new section:

485:16-a Water Conservation Strategy. All community public water suppliers shall submit a water conservation strategy to the department of environmental services, division of water supply and pollution control, no later than July 1, 1993. Each strategy shall address the following:

I. The establishment of an on-going meter installation program. This program shall include a plan for the testing, recalibration, repair or replacement of meters.

II. An on-going leak detection and repair program to ensure that the amount of unaccountable water will be minimized.

III. Measures to implement an on-going public education, information, and participation program in an effort to educate and inform the public about the proper and efficient use of water resources.

This program shall include information to assist consumers in decreasing and minimizing consumption.

### AMENDED ANALYSIS

This bill establishes a water conservation strategy program, for community water suppliers. The strategy includes measures to reduce waste and requires suppliers of community water to establish an on-going public education program to inform the public about the proper and efficient use of water resources.

Tape inaudible.

Senator Blaisdell moved the question.

Adopted.

Floor amendment fails.

Ordered to third reading.

**SB 363**, an act relative to health insurance coverage of autologous bone marrow transplants. Insurance committee. Ought to Pass with Amendment. Senator Hollingworth for the committee.

**5089L**

### Amendment to SB 363

Amend the title of the bill by replacing it with the following:

#### AN ACT

establishing a committee to study all aspects of bone marrow transplants, including the most effective method to provide health insurance coverage for bone marrow transplants.

Amend the bill by replacing all after the enacting clause with the following:

1 Study Committee Established; Duties. There is established a bone marrow transplant committee to study all aspects of bone marrow transplants, including the most effective method to provide health insurance coverage for bone marrow transplants.

2 Membership. The committee shall consist of the following members, all of whom shall be appointed within 30 days of the effective date of this act:

I. Two senate members, appointed by the president of the senate.

II. Two house members, appointed by the speaker of the house.

III. One person representing Mary Hitchcock hospital, appointed by the director of the hospital.

IV. The insurance commissioner, or designee.

V. Three representatives of insurance companies, one from Blue Cross/Blue Shield New Hampshire, one from a health maintenance organization, and one from a commercial insurance organization, all appointed by the insurance commissioner.

VI. One member of the public who has experience in bone marrow transplants, appointed by the governor.

VII. One representative of the American Medical Association, appointed by the association.

VIII. One representative of the New Hampshire Hospital Association, appointed by the association.

3 Mileage. Committee members shall serve without compensation, except that the legislative members shall receive mileage at the legislative rate when attending to their duties on the committee.

4 Membership; Chair; Meetings. The first meeting of the committee shall be called by the insurance commissioner within 60 days of the effective date of this act. The chair of the committee shall be chosen by the members at the first meeting.

5 Report. The committee shall make a report of its findings and recommendations, including proposed legislation, to the president of the senate, the speaker of the house and the governor no later than November 1, 1992.

6 Effective Date. This act shall take effect upon its passage.

### AMENDED ANALYSIS

This bill establishes a bone marrow transplant committee to study all aspects of bone marrow transplants, including the most effective method to provide health insurance coverage for bone marrow transplants.

Tape inaudible.

Committee amendment adopted.

SENATOR MCLANE: Tape inaudible. The cost is not major. I believe that probably the person that spoke most clearly to the cost was a young woman, a mother of two children from the state of Vermont who appeared before us as a functioning, healthy school teacher of eighth graders of 14 and 16 year old children. She had this operation and she was alive and functioning and she clearly told us that she has already paid into her insurance more than the cost of the bone marrow transplant. It is not a simple operation, but I will explain it to you. They take out some of your bone marrow and they keep it in a culture and they give you chemo so strong that it kills your own bone marrow. You stay in isolation for a few weeks so that no germs come at you and then they inject again, your own bone marrow, and it regrows. That is what we are talking about and that

is what we want. We feel that it is slightly feminist in that it is one of the leading causes of death in women. We feel that the insurance industry has perhaps gone under the guides of the fact that it is experimental when there is living proof that it works. We would urge you to pass this bill for the sake of womenkind in New Hampshire.

Senator McLane offered a floor amendment.

### 5131L

#### **Floor Amendment to SB 363**

Amend the title of the bill by replacing it with the following:

#### **AN ACT**

relative to health insurance coverage of autologous  
bone marrow transplants.

Amend the bill by replacing all after the enacting clause with the following:

1 New Section; Accident and Health Insurance Coverage. Amend RSA 415 by inserting after section 18-b the following new section:

415:18-c Coverage for Autologous Bone Marrow Transplants. Each insurer that issues or renews any policy of group or blanket accident or health insurance providing benefits for medical or hospital expenses, shall provide to each group, or to the portion of each group comprised of certificate holders of such insurance who are residents of this state and whose principal place of employment is in this state, coverage for expenses arising from the treatment of cancer by autologous bone marrow transplants according to protocols reviewed and approved by the National Cancer Institute.

2 New Section; Hospital Service Corporations. Amend RSA 419 by inserting after section 5-b the following new section:

419:5-c Coverage for Autologous Bone Marrow Transplants. Every hospital service corporation, and every other similar corporation licensed under the laws of another state, shall provide to each group, or to the portion of each group comprised of certificate holders of such insurance who are residents of this state and whose principal place of employment is in this state, coverage for expenses arising from the treatment of cancer by autologous bone marrow transplants according to protocols reviewed and approved by the National Cancer Institute.

3 New Section; Medical Service Corporations. Amend RSA 420 by inserting after section 5-c the following new section:

420:5-d Coverage for Autologous Bone Marrow Transplants. Every medical service corporation, and every other similar corpora-

tion licensed under the laws of another state, shall provide to each group, or to the portion of each group comprised of certificate holders of such insurance who are residents of this state and whose principal place of employment is in this state, coverage for expenses arising from the treatment of cancer by autologous bone marrow transplants according to protocols reviewed and approved by the National Cancer Institute.

4 New Section; Nonprofit Health Service Corporations. Amend RSA 420-A by inserting after section 7-d the following new section:

420-A:7-e Coverage for Autologous Bone Marrow Transplants. Every nonprofit health service corporation, and every other similar corporation licensed under the laws of another state, shall provide to each group, or to the portion of each group comprised of certificate holders of such insurance who are residents of this state and whose principal place of employment is in this state, coverage for expenses arising from the treatment of cancer by autologous bone marrow transplants according to protocols reviewed and approved by the National Cancer Institute.

5 New Section; Health Maintenance Organizations. Amend RSA 420-B by inserting after section 8-d the following new section:

420-B:8-e Benefits for autologous bone marrow transplants shall conform to the requirements of RSA 415:18-c. Such benefits shall not be subject to any greater deductible than any other benefits provided by the health maintenance organization. The co-insurance required by the enrolled participant shall not exceed 20 percent of the reasonable and customary charge for the services provided.

6 Effective Date. This act shall take effect January 1, 1993.

### AMENDED ANALYSIS

This bill requires all health insurers, hospital service corporations, medical service corporations, nonprofit health service corporations, and health maintenance organizations to provide coverage for cancer treatments by autologous bone marrow transplants according to protocols reviewed and approved by the National Cancer Institute.

SENATOR HEATH: Senator McLane, I have two questions for you. You may have answered this and I didn't hear it. Is this only out of cases that have arose out of breast cancer?

SENATOR MCLANE: Yes it is. That was one of the things that we were bothered by is that it was the breast cancer that was not covered.

SENATOR HEATH: All others are now covered . . . Second question is, does this legislation permit in anyway a person to buy this insurance after the discovery of breast cancer?

SENATOR MCLANE: I would say that it wouldn't in any way affect the law about when you can purchase insurance and whether you are covered for previous illnesses. It does not address it in any way. It also does not affect it in that it does not say that you can have this operation after you buy the insurance. I do not believe, and I don't know definitely, but, I do not believe, that it affects which coverage you have and when you buy it.

SENATOR HEATH: Do you know if there is anyone that can answer that question?

SENATOR MCLANE: I would be happy to ask somebody that question. I will get an answer for you while Senator Hough speaks.

SENATOR HOUGH: You know before the end of this session my patience is going to run out and I am going to give you a speech.

SENATOR HEATH: Oh, we are all going to walk . . .

SENATOR HOUGH: However, in respect to my colleagues I will depart from the usual and do something that I have seldom if ever done, I would like to just briefly read to you a letter that I have received. If you would bear with me. This letter is from a long time and close personal friend who is the president of the Friends of the Norris Cotton Cancer Center. He writes, "Dear Ralph, although I am not a constituent" and in fact, although he did grow up in Lebanon with my brother, sister and I, he now lives and practices law in Concord. He says, "I am writing to encourage your support in SB 363 which would require insurance coverage for autologous bone marrow transplants. This bill was sponsored by Senators McLane, Shaheen and Cohen and it is very important to your constituency. I am enclosing a copy of the testimony that I made to the Senate Insurance committee in support of this bill. Autologous bone marrow transplant, which is performed in New Hampshire only at the Mary Hitchcock Medical Center, is a treatment of choice for certain women with breast cancer. It offers a significant hope of recovery or extended survival to women who qualify for the procedure who otherwise would be terminal cancer patients. Typically these are women like my sister who are younger and have children in school and are active members of the work force with decades of productive living ahead of them. Although several health insurers in New Hampshire, the Blue Cross Blue Shield of Vermont, Maine and Massachusetts, all provide coverage for this treatment, Blue Cross Blue Shield of New Hampshire has refused to do so claiming that it is experimental or investigational. Their position is motivated entirely by a concern for the cost of the procedure which can be substantial. Numerous court decisions have gone against the Blues in other

states on this issue in the last two years; Nevertheless, the women in this predicament find themselves facing difficult choices of embarking on litigation to establish her rights under her health insurance contract, going through the procedure at the risk of putting financial strain on the family which will be inseparable for many or foregoing the treatment which her doctors recommend and resigning herself to an early death because her health insurers won't meet their responsibilities. If a woman is unfortunate enough to have metastatic breast cancer and unfortunate enough to live in New Hampshire instead of Maine, Massachusetts or Vermont, and unfortunate enough to have Blue Cross Blue Shield as a health insurer instead of Matthew Thornton or one of the others that pay for this procedure, these are the choices that she faces at the point in her life when she is in the most vulnerable condition physically, emotionally and financially. It was exactly what Sally went through at the end of her life. The population of metastatic breast cancer patients is not a large one and they don't carry a lot of political weight. The health insurers, particularly the Blues, are dispatching their armies of well paid lobbyists to beat this bill. But it is legislation that arises from the raging inequity that exist with respect to this issue and this carelessness in which it has been handled by the Blues. I urge your support of SB 363 and extend my warmest and best wishes to you and your family. Sincerely Richard Couser. I would tell you that Dick Couser is a very thoughtful gentlemen. He makes reference to his sister. His sister Sally was the youngest of three children, she graduated from the University of New Hampshire, she returned to the community where she married and raised three children. She also happened to be the sixth grade teacher of both of my children. She and her husband and the children were involved in youth athletics along with my own children and an outstanding gifted person. It was a year ago, the 24th day of December at 2 o'clock in the afternoon, that is Christmas Eve, my family went to the Congregational Church in Lebanon to Sally's funeral. Here is a clear indication of the loss of a most beautiful and productive life that otherwise could have had a fighting chance. The Norris Cotton Cancer, and we are not talking about a bunch of wild eyed liberals, the name Norris Cotton at the cancer center is a result of Senator Cottons' work with Warren Magnasean. They understood clearly that there was an opportunity for research in technology in state of the art treatment that could save lives. We know that the high incidents of cancer in the granite state, and in Vermont, we have at our fingertips the availability. This bill is not the case of Senator McLane trying to play checkmate in the political process, her attempt in this amendment is very sincere. There have been a number of us that have been concerned about this very issue, and don't take lightly what you have before you. I would

urge that you support the McLane floor amendment and move this piece of legislation for no other reason that it will protect the lives of New Hampshire women that have much to give to this society and this state. Thank you.

SENATOR DISNARD: Senator Hollingworth, I am asking you the question because you gave the committee report. I realize that this is emotional. What was the reason that the committee decided to recommend the study?

SENATOR HOLLINGWORTH: The bare facts and nothing but the truth. The truth was that there wasn't enough votes in the committee to pass the bill. Some felt, even though some of us felt that it was a very worthwhile bill, the best way that we could get it through was to take it and make it a study. I am in a very difficult position, I would like to add, because I supported ought to pass on the bill, but I also presented the study committee. So I am in a position where I'm feeling very uncomfortable because I would like to support the committee report as ought to pass with the study, but my original position was that I supported the bill. I am sorry that I am in that position.

SENATOR FRASER: Mr. President, it seems that everytime that an issue such as this comes up, I am on the different side than my dear friend and colleague, Senator McLane. Maybe someday we will be on the same side of one of these issues. Clearly the amendment is a mandate requiring in this case, Blue Cross Blue Shield to pay for a procedure that is not now covered. It is quite clear and correct that Blue Cross Blue Shield is taking the position that this bone marrow transplant is experimental and therefore it is not covered. I want to qualify my concern, Mr. President, by saying that I joined with Senator Elaine Krasker a few years ago and we spearheaded getting legislation passed to have Blue Cross Blue Shield cover mammograms and that became law. Unfortunately, it wasn't too long after that bill became law that we discovered my own wife had breast cancer. For that reason and for no other purpose could I oppose what is contained in the amendment except for the fact that it is an extremely expensive procedure and we have no idea, at least I don't have any idea of how many bone marrow transplants are conducted in the state of New Hampshire. Beyond that it is not preventive such as the fact that we were supporting something that I thought was preventive, namely to cover mammograms. This is a mandate to cover for a procedure that is already ongoing. If the bill is properly studied and the conclusion of this body is that it should be covered, then I would support it, but right now it just strikes me from what little that I know, that we are not in that position. I would support



the committee report to create a study committee and have this whole area looked into. Thank you, Mr. President.

SENATOR PODLES: Senator McLane, you indicated that there is one case in court. Are there any other cases in court right now?

SENATOR MCLANE: I believe that there are two cases in court right now and that the order with the state Representative from Durham has been that they will pay for it while the case is pending.

SENATOR PODLES: Wouldn't it be a good idea to wait until they decide in court what is going to become of that, rather than going ahead and passing this amendment, would it be better to study it first?

SENATOR MCLANE: I don't believe that is true, because I don't think that the court case will be definitive. I think that the court case points out one of the problems, that here is a women dying of breast cancer; wants an operation that she feels will save her life, and she has to go to court and fight about it. I think that that is just what we are trying to prevent. And for that reason, I think, we should pass it now.

SENATOR PODLES: Once this amendment is passed, Senator, it is a very expensive procedure, would you know what it would cost a rate payer?

SENATOR MCLANE: I am under the impression that there are 18 to 20 of these operations performed now and that those people who live in Vermont and Maine and come to the Hitchcock Clinic, those people who live in Vermont and Maine are covered. There are some companies that cover it. So all that we would be doing is extending the coverage to those few people who are not covered. I am not sure what that number would be or what the price would be, but I do not think that it is a significant and large amount of money.

SENATOR PODLES: I don't believe my question was answered, Senator. What I want to know is, was the committee told how much extra this would cost for people that are going to be paying these premiums?

SENATOR MCLANE: I believe that it is impossible to predict how many people. It would be a lot less than 18 which is the number done now. As I said before, many of those are covered already. It also cost in the vicinity of \$120,000 to \$220,000. So I would say that that is the guess. It is a small, small percentage of the health care cost, and I think, it is important to remember that there are costs to a death, and there are costs to other treatments that someone would have rather than the autologous bone marrow transplant.

SENATOR COHEN: I rise in strong support of the floor amendment. Two people, two constituents of mine, Brenda Miller of Portsmouth is in need of this, she has breast cancer and is in need of this legislation. The daughter of former Senator, Elaine Krasker who used to sit in this seat is undergoing this kind of treatment to save her life. I spoke this morning with a Doctor Tucvorian from the Dana Farber Cancer Institute who in 1986 treated the next President of the United States, Paul Tsongas using this autologous bone marrow transplant and as Doctor Tucvorian said, "this is a tantamount to a cure, it is fully effective." Senator Tsongas' insurance covered him. This same kind of insurance should be extended to women who can also be treated effectively. I strongly urge passage of this, we don't need more study, it needs passage. Thank you.

SENATOR SHAHEEN: I will be very brief, but I wanted to respond. I think, Senator Heath, you asked a question about what forms of cancer are covered by this? It is not limited strictly to breast cancer, although that is the most widespread form of cancer that would be treated by this. I also wanted to read a very brief statement from the American Cancer Society relative to bone marrow transplants and it will be brief. "The American Cancer Society believes strongly in the efficacy of bone marrow transplants as a treatment for various types of cancer. The Society was a principal and early founder of E. Daniel Thomas, MD whose research into this treatment earned him the Nobel Prize. Our support of his pioneering work in this field demonstrates our commitment then and now to the value of this form of treatment which should be available to the patient regardless of cost when deemed by that patient's physician as the treatment of choice." That is what is missing in New Hampshire as was pointed out by both Senators Hough and McLane. If I lived in Maine, Vermont or Massachusetts, I would have this form of treatment covered by my insurance, but because I live in New Hampshire, if I get breast cancer I am not going to be covered and that is not fair.

SENATOR PRESSLY: Members of the body, I rise in confusion.

SENATOR DUPONT: That is acceptable, Senator.

SENATOR PRESSLY: Thank you. This is a difficult situation because I am hearing two different sets of facts from groups that I usually turn to for advice and to whom I trust. So the position I am in right now is absolute confusion. The only thing that I know for sure is that I do certainly support the study. This is something that certainly merits that. One group says that it is only for breast cancer and the other group says that it is for both breast and prostate cancer. Some say some agencies cover it and some don't. Some say that

it is experimental and some say that some other insurance companies do allow it. So I am very, very confused and very torn and conflicted by this debate. I have always supported the womens issues and will continue to; however, it seems as though this might be in a transition stage and I would like any help that any of you might have regarding it. Apparently in the medical world there are different transitions when a procedure does move along from an experimental stage into an acceptable stage where it is covered by insurance. This seems to be the case in this particular situation or at least that is the only thing that I can sort of glean from what I have been told. So I am rising to say that I will definitely support the study, but I have some real concerns as far as mandating it at this time; however, I want to be recorded as extremely concerned about this issue. I feel that this type of lifesaving procedure should be available and should be available to all consumers. Thank you very much.

SENATOR MCLANE: Senator Pressly, I can understand your confusion about how we are talking about just breast cancer when the amendment obviously covers all bone marrow transplants. I think that it points out what we feel is the unfairness of the present situation. Would you be surprised to learn that other states cover all organ autologous bone marrow transplants. I want to make that very clear, that are approved by their doctors and by the facility where they are being performed. Everyone doesn't get one just because they want one, but what is not covered is breast cancer for certain women in New Hampshire and that is why we are looking at it as a . . . that is why the womens lobby is lobbying you, whereas Paul Tsongas could get it done. So when we talked about, I am not sure it is prostate cancer, but I think that was really sort of a phrase that meant that all of the men get it and the ladies that have breast cancer don't. But would you be surprised to learn that that is why we are talking about breast cancer?

SENATOR PRESSLY: I believe your question confirms my confusion. Yes, I do believe that there is a great deal of confusion regarding this.

SENATOR HEATH: I rise in favor of this at the risk of being called the term 'nasty'.

SENATOR MCLANE: Oh, we will.

SENATOR HEATH: I have always believed that if they did anything in the state, that our highest priority once we took care of the roads and the general basic things that government was established for, that we should do something in catastrophic illness and this isn't government doing it, but it is government allowing it. I have also been

greatly concerned that we keep adding on to insurance mandated things like this. I personally would prefer to see these kinds of new techniques that are lifesaving in a life threatening situation added on and broken bones and deviated septum and separated collar bones and so on, taken out if we are going to contain cost that way. So I think that it is important that we study what a mandate would cost. I also am unsympathetic with some of the claimers that we keep running up the cost of insurance because I don't think that the medical community is doing anywhere near what it should be. In fact, I think that it is being insincere. It comes in and wants its liability cost capped and then it runs you around as if it is a private association, so that everybody in the building thinks that they own a piece of the business gets a part of the action. They can bill you \$2 for an aspirin and give you unnecessary x-rays and so on. I think that we have to contain cost, but I don't think that the way that you contain it is to take new lifesaving technologies out of the reach of people who can afford insurance. It is already out of the reach of people who can't afford insurance. I think that this is important that we add this and I might add, and this is from one of my medical experts Doctor Dena Dell that I listen to when I am driving down here sometimes. I didn't know until I heard him mention it that there is male breast cancer, so I think that this is gender neutral to begin with.

Senator Fraser requested a division vote.

Senator Fraser withdrew his request for a division vote.

Floor amendment adopted.

Ordered to third reading.

Senator Roberge in opposition to SB 363.

**SB 462-FN**, an act relative to optional allowances and beneficiaries under the New Hampshire retirement system. Insurance committee. Ought to Pass with Amendment. Senator Bass for the committee.

5086L

### **Amendment to SB 462-FN**

Amend the bill by replacing sections 1 and 2 with the following:

1 Children as Beneficiaries under Optional Retirement Allowance.  
Amend RSA 100-A:13, I to read as follows:

I. Any member who has reached service retirement age as provided in RSA 100-A:5, I(a) or II(a), or RSA 100-A:19-b, or any retiree within 120 days after the effective date of retirement, may elect to receive, instead of the retirement allowance otherwise payable, a retirement allowance of equivalent actuarial value under one of the

options named in paragraph III, or to redesignate any such option previously elected. **When the member elects to receive an optional retirement allowance under paragraph III, the beneficiary or beneficiaries who he nominates may include the member's children, with the reduced retirement allowance payable to be divided equally among the children.** The notice of election or change of retirement option shall be on a form designated by the board. The optional allowance shall be effective upon retirement if the election is made before the effective date of retirement, and on the first day of the month following receipt by the board of the notice of election or change of option if made during the 120-day grace period. When an election or change of option is made during the 120-day grace period, no retroactive adjustments will be made in payments already received by the retiree. After expiration of the 120-day grace period no change in option selection shall be permitted except as provided in paragraph II. If a retiree dies after filing notice of election or change of option during the 120-day grace period but before the effective date, the election or change shall be effective as of the date of death. If a member dies after filing an election for a survivorship retirement option and before the effective date of retirement, whether or not the member has filed for retirement, the beneficiary who was nominated by the member in the election of the option may elect to receive either the optional survivor benefit which the member had elected or the ordinary death benefit provided under RSA 100-A:9, whichever is more advantageous to the beneficiary; provided that, in the case of the member's death before retirement, if the beneficiary named in the survivorship option election is not the same person as the beneficiary under RSA 100-A:9, then the death benefit under RSA 100-A:9, II, and not the survivorship option shall apply.

2 Application. Notwithstanding any provision of RSA 100-A:13 to the contrary, any retired member of the New Hampshire retirement system, who retired prior to July 1, 1992, and who did not elect a survivorship option at the time of retirement which nominated a child or children as beneficiary, as provided in section 1 of this act, may elect, between July 1, 1992, and December 31, 1992, to change the optional allowance which was chosen under RSA 100-A:13, II and to redesignate the beneficiary or beneficiaries nominated under the allowance to include the member's child or children.

### AMENDED ANALYSIS

This bill provides that the beneficiaries named in an optional retirement allowance may include the children of the retired member who has chosen the allowance.

SENATOR BASS: Mr. President, under the State Retirement System there are many options that retirees may take at the time that they become eligible for retirement. One of them is that they can elect to take a lump sum payment, a type of annuity. Under one of the three different options under that election procedure they can designate beneficiaries for a reduced retirement allowance in the case of their death. Under the old system they could only appoint one beneficiary, but many individuals have families. The purpose of this amendment is to allow the designation of any or all of your children. It seems to be a fair option and it does not have a fiscal impact. The committee urges your adoption on the amendment and the committee report of ought to pass as amended.

Committee amendment adopted.

Ordered to third reading.

**SCR 12**, an act concerning the Constitution of the United States. Internal Affairs committee. Inexpedient to Legislate. Senator Delahunt for the committee.

SENATOR DELAHUNTY: As we are all well aware that the federal deficit continues to climb. The most recent estimate placing it at some \$4 trillion. This year congress will spend over \$360 billion more than it will take in. Understanding the severity of the problem and realizing the dire implications for future generations should this deficit spending continue, New Hampshire passed a resolution that called for a constitutional convention that would address a balanced budget amendment. Those who oppose this convention fear that it could lead to many other changes in our federal constitution. I suggest to you that our greatest fear should be our continuation of spending far and excess in that of which the federal government collects. By remaining on record in favor of the Con. Con., we are sending a message that a balanced budget is crucial and in the best interest of our country and its people. Until such time that the congress understands the need for a balanced budget, there is no other way but to keep the pressure on them to spend within their means. For that reason, the committee urges the defeat of SCR 12 and urges you to vote in favor of the motion of inexpedient to legislate.

SENATOR PODLES: I rise in favor of inexpedient to legislate to SCR 12. New Hampshire has a national reputation for common sense and fiscal responsibility. So it was appropriate that New Hampshire in 1979 became one of the many states to use article five of the United States Constitution to compel congress to act on a balanced budget — constitutional budget. I was a House member at that time and CACR 8 sponsored by the Speaker, George Roberts

was passed. It called for a limited constitutional convention to purpose a balanced budget. It was a limited constitutional convention. New Hampshire is one of 29 states now on record as calling on congress to propose that federal balanced budget amendment. Two-thirds of the states, which is 34, would force congress to act. Congress has refused to discipline itself while the nation sinks deeper into a sea of red ink. It is a deficit of \$400 billion in 1992 running the national debt to \$4 trillion or \$16,000 for every man, women and child in America. Band-aid laws have been passed, they were violated and repealed. Only the constitution offers a permanent cure. It gives you the power to force congress, and we shouldn't be afraid to use our constitution as it was intended to be used. There are at least four legal safeguards to limit the constitutional convention to one subject. In calling the convention, number one, congress would draft the limitation into a concurrent resolution. Number two, congress, not the convention, would choose the mode of ratification. They could kill any stray amendment by refusing to choose a method of ratification. Number three, the constitution gives the Supreme court jurisdiction in all cases in which a state shall be party. If the convention proposes a stray amendment, any of the states that had applied for a convention limited to a balanced budget amendment would have the right to bring suit directly to the Supreme Court. Lastly, four, any proposed amendment must be ratified by 38 states before it can become part of the constitution. Ratification by 38 states is a difficult process. For example, the last two proposed amendments, the equal rights amendment and the District of Columbia voting rights amendment, were not ratified. So, will a constitutional convention be called, not likely. Congress must call a convention when 34 states apply for it; however, once the 33rd state applies for a convention to propose a balanced budget amendment and the writing is on the wall, congress would propose the amendment. In 1986 the United States Senate failed to pass a balanced budget amendment by a single vote. In 1990 the House of Representatives, the U.S. House of Representatives came within seven votes of achieving the 2/3 votes needed for passage. I urge you not to allow SCR 12 to strip away what New Hampshire has already done. This is one last tool to make congress responsible. Vote inexpedient to legislate.

SENATOR DISNARD: Senator Delahunty, would you believe that testimony in the committee ex-Chief Justice Holmes in his opinion, and he seems to be respected in this country, indicated that the delegates, not the congress, the delegates would control what items could be brought before the government before, TAPE INAUDIBLE, would you believe that?

SENATOR DELAHUNTY: Yes, Senator, I believe that is what the book says and I saw you reading it, so I would have to support you.

SENATOR DISNARD: It isn't in this book.

SENATOR HEATH: Senator Disnard, in the decision of Chief Justice Holmes that you are referring to, is a call for a convention for a specific purpose specifically mentioned in that?

SENATOR DISNARD: I would have to ask Senator McLane if she has a copy of the letter. It was my interpretation as . . .

SENATOR HEATH: A letter from Holmes?

SENATOR DISNARD: Yes.

SENATOR HEATH: In his words?

SENATOR DISNARD: Yes.

SENATOR HEATH: Okay. Second question. Can you tell me when Chief Justice Holmes finished serving?

SENATOR DISNARD: Sir, I will answer that by saying that I am 68, one of the oldest here and I think that I can think as able as someone that is younger, so I object to that type of question because I think the man is intelligent and he knows what he is doing.

SENATOR HEATH: Senator, I think that you have mistaken both the intent and the situation. Are you talking about Oliver Wendall Holmes?

SENATOR DISNARD: I don't have to answer his question. It is stupid.

SENATOR HEATH: Senator Disnard?

SENATOR DUPONT: Senator Disnard, do you yield?

SENATOR DISNARD: No. Not to those type of stupid questions.

SENATOR MCLANE: Talk about bed fellows in politics. There is something about me and George Disnard and the John Birch Society all on one side of an issue that appeals to my fancy. Let me tell you what has happened. There has been within the conservative movement, and I speak of the conservative moment. It is a perfect example of the fact that politics is a round circle. Sometimes when you get so far to the left that you get over to the right and that is where George and I are, we are the sensible ones. The conservatives have tried for 15 years to try and pass a balanced budget amendment. They have failed miserably. What they have done is have gone to the various states to try and call a constitutional convention because they cannot do it in the proper way that all of the other amendments



to the constitution were formed. They have gone the other route of going through the states. They have to get 34 states. They got as high as 32 and New Hampshire was one of them. Florida, Alabama and Louisiana have repealed the call for a constitutional convention, as we hope to here today. There hasn't been a constitutional convention in 205 years. The reason that we are in opposition to it, as well as the John Birch Society, is that although they say the reason that they want a constitutional convention is for a balanced budget amendment, there is nothing in the constitution, in law, in history or precedent, which means that it would be limited to just that one issue. If you have gotten some crazy calls from people over this issue, the reason is that they want a constitutional convention for their own strange and odd reason. The John Birch Society claims that Nelson Rockefeller of the Rockefeller Foundation and Dick Thornborn of Unemployed or whatever, and Rudman all want it because it has failed. It is Nancy Cazun, Rexford Tugwell of the news states constitution wants to prove that private ownership of farms is not good for society. They go on with the dangers. It is not something that the state of New Hampshire wants and I would urge you to vote to repeal the mistake that we made 12 years ago.

SENATOR NELSON: Senator Podles, my great colleague from the great city of Manchester. In one of your remarks, Senator, you said that the congress refuses to discipline itself. I believe that you made that remark?

SENATOR PODLES: Right.

SENATOR NELSON: So my question is, if that is the case, what would they ever do if we had a constitutional convention and they could pour in there, couldn't they make all kinds of changes?

SENATOR PODLES: Senator, I don't think that they could do that. In fact, if they knew that a constitutional convention would be held, they would vote a balanced budget themselves, because they are very close to it as I mentioned. The Senate was one vote out and also the House has seven votes to go, so they would vote in a federal balanced budget amendment.

SENATOR NELSON: Senator Podles, would they be restricted just to the balanced budget or could they in fact bring in other . . .

SENATOR PODLES: Most of the states are passing resolutions making it restricted, making that convention very limited to only one subject, which is the balanced budget amendment. It still has to come back to the 38 states for ratification.

SENATOR NELSON: Thank you, very much.

SENATOR HUMPHREY: Ladies and gentlemen of the Senate, and especially, Senator McLane. The Senator and dear friend from district 15 the other day called one of my bills stupid. Well I am not going to return the compliment, but I would certainly observe that this resolution is nutty. You have to be a little nutty to propose this resolution when deficits are running anywhere from to \$250 billion to \$400 billion a year and are continuing to do so. The Senator was mistaken when she informed us that there has never been a previous call for a constitutional convention. In fact, it was the stimulus of a call for a constitutional convention that moved congress to propose to the states an amendment to the constitution that resulted in the direct election of the United States Senator. I don't know the number of that amendment, but it occurred in the teens in the earlier part of this century. It used to be that this body appointed or elected, if you will, United States Senators to represent this state and the people, ultimately, decided that they didn't like that system and they wanted direct representation and that required a change in the constitution of the United States. How did that happen? Do you think the United States Senators sent to the state legislators a proposal to amend the constitution calling for popular election of Senator? Hell no! They weren't about to give up their good deal. It took resolutions from a large number of state legislatures calling for congress to hold a constitutional convention to force congress to send to the states that resolution which ultimately became a part of the constitution of the United States that called for popular election of United States Senators. So there is a precedent. There may be others, but there is at least that one that comes to mind off the top of this Senators head. Now Senator Podles has argued the case very well indeed. I am really surprised that the Senator from district 15, would offer this resolution. The Senator from district 15 it seems to me, has gone so far to the left that she has come around behind and begun meeting the fringes of the right, and that explains this weird alliance between this Senator from district 15 and some of the other strange people in our body politic. Congress is not going to allow a constitutional convention, you can be sure of that. Why? For the same reason that congress wouldn't allow a constitutional convention of the question of a direct election of United States Senators. Congress doesn't want to lose control. As Senator Podles rightly pointed out, just as soon as a few more states add their names to those of New Hampshire and the other states, congress will panic and will send to the states, a balanced budget amendment. But it would be terribly wrong for us to back up at this point. What this state did some years back was right. Had enough states followed the lead of New Hampshire, we wouldn't be in nearly as big a fiscal mess that we are today. Now there has been a lot of joking in here and that is all well and

good, but let us think about the bottom line and who reaps the whirlwind of all of these trillions of dollars blowing in the wind? It is our children. Ultimately, one way or the other all of this spending is going to be paid for. Indeed we are paying for it, but it is only a question of when do we begin paying down the debt. In the meantime, all of this borrowing, and remember that debt service is now 56 cents out of every dollar collected, just debt service, just to roll it over from one year to the next, not to pay down a penny. Debt service is the largest single item in the federal budget, it is over 50 cents, it is about 56 cents and getting more every year. Even today we are reaping the whirlwind, we are paying the penalty, ourselves and the next generations. How? In lost opportunity. My goodness, look at what is happening to our economy. The government is sucking up all of the capital of which there isn't enough to begin with, that is an overstatement. The government is sucking up a large part of the capital that is available and preempting other sector borrowers. That means lost opportunities, that means a lower standard of living for us and for the next generation who are already beginning to realize that they probably aren't going to do as well in their lives as their parents did before them. So for all of these reasons, Mr. President, I urge my colleagues to support the motion of inexpedient to legislate. There isn't going to be a convention. Even if there were, it would require 3/4 of the states to ratify, 3/4 of the bodies like ours. Don't you think that we can exercise sufficient judgement? But we will never get to that point because congress will send an amendment to the states so as to preempt any constitutional convention.

SENATOR HEATH: Before I get to the crux of my argument, I want to suggest to Senator McLane that when you have Nelson Rockefeller talking to your friend Dick Thornberg, you have a nutty situation. It might grieve you some, but Nelson rode off in the land of room temperature some time ago. Senator Disnard, I hate to announce the death of Oliver Wendal Holmes, but it occurred some many years ago, and some of his decisions have been overturned. He had a wonderful mind, but like all of us, somewhat imperfect; nonetheless, when he spoke to this particular situation, he was not speaking to it in the specifics of calling for a convention for a specific purpose. The Supreme Court that will absolutely decide that question, now resides, at least in part, in Washington, and I don't think that they will consult a 100 year old suggestion that was on a different kind of situation with a great deal of weight. Last time I argued this case, I had a ribbon that I started with Senator Charlie Bond and walked around this room 2-1/2 times as I remembered. That was the situation then and that was the size of the debt, one inch equaled one billion dollars and it went around here 2-1/2 times, one billion,

not one million. As Senator Podles has said, we are now each of us, encumbered, each man, women and child, with or without an income are encumbered to the tune of \$16,000. If this were in effect today, it doesn't do a thing to reduce that, it just stops adding to it. It doubled from the time that we originally asked for the constitutional convention for that purpose when I was first in the legislature until the last time that we argued it, it doubled. It is a problem that we cannot solve in our lifetime. If we were to do this now and if every state in the union were to do it, it just begins to stop adding to the problem. It does suck up available money, money that people could borrow to improve their lives, to employ other people, to get public works projects done. It takes a huge portion of the available cash, but more importantly, in competing for that it raises the interest rates. If you think the interest rates are low now, they are nowhere as near where they should be if you took out the competition of the United States government buying for those loan dollars. Interest rates would be around a real 2 percent on home mortgages if we didn't have a national debt. There is a genius in the way that the founding fathers designed ways to change the constitution. There are a few things that cannot because of congresses own self-interest be done through the way that we have made the changes thus far in the constitution. There had to be an alternative process that avoided congress. Why can't congress do it, why institutionally can't it? Because congress has to listen to the people and the people say do this for me, do that for me and keep my taxes down and that is exactly what they have done. They have done what people have asked. There is a lot of hypocrisy in people belly-aching about congress when congress is doing what they asked. Give me the program, don't make me pay for it. That is how we got there and that is why congress can't change, so we have to change it. When we get within one state, and we are within three now, when we get within one state, congress is going to do the inevitable anyway. But if you are concerned about it being a full blown convention, remember the last time that happened, we got the constitution we love so well now. If you look at the text, I mean I care about the first amendment as a writer, I certainly care about the second amendment as a gun enthusiast and a hunter. The fifth amendment, property rights, I risk all those. All of you risk very important rights if we go into a full blown convention, but the nuts are going to change the constitution, it is too high a test. So you shouldn't worry about it. If that many people with the super majority into the legislature want to change the constitution, then I would suggest perhaps in whatever area that you can get that kind of support in this country, you had better change it. One of the great benefactors in this and this isn't Japan bashing, but one of the great benefactors in having this debt is, Japan. It is a good investment and

the United States is rock solid as a security and they are loaning us the money. When they get the interest that we pay, they have more money to work with and competitive situations, and give inducements to their industries. But banks don't mind it too much, particularly the more international banks, for the same reason. So I would suggest that if you vote for this, you are voting against American business. You are voting against your children and grandchildren and great grandchildren. You are voting for an extra edge for Japan in competing in international markets on a fair basis. You are voting against all those people who would be able to buy homes if interest was one or two percent or three percent instead of the interest rates that we have now. I would suggest that you are showing a great distrust of the American people if you believe that under the wildest circumstances it got into a full blown convention, that the American people with the super majorities, that have called for change in the constitution, would vote away any of their precious rights. Thank you.

SENATOR DISNARD: Senator Heath, I apologize. Would you believe, Senator, that I was wrong? It wasn't Holmes, it was Chief Justice Berger. In answer to your question, yes, it was related to, and I will give you the copy. It was related to the issue that you requested.

SENATOR HEATH: To respond, Senator, I didn't know why it was a stupid question to ask what Justice it was and I didn't ask you how old he was, I asked you what year he left office. I can't tell you the decisions that Chief Justice Berger has made, I guess I am not interested, he is not there either.

SENATOR DISNARD: I apologize.

SENATOR HEATH: I accept your apology.

SENATOR SHAHEEN: I would certainly agree with everyone that has spoken to this point, that one of the greatest impediments to the long term economic stability of this country is the national debt. I think that we ought to bring a little reality to this discussion. While I like to bash congress as much as anyone here, I would just like to point out to the members of the Senate, that in fact, this country's deficit, back in 1979, had gone from \$80 billion down to \$40 billion under the presidency of Jimmy Carter. It wasn't until after 1980 that we began as Senator Humphrey's candidate for President so accurately put it, "voodoo economics," which has brought us to today when our debt is \$1 trillion. So this resolution isn't going to do anything. The fact is, is that the President of the United States could do something about this country's deficit and that hasn't happened.

SENATOR J. KING: I will make one simple statement. I agree with Senator Shaheen, relative to where the heavy increase in this deficit started. As we spoke yesterday about the veto power that the President has and he can use it. He is part of it. It is not congress completely, he has that veto power, he doesn't have to accept any budget, even though I will be going along with the inexpedient to legislate.

Senator Delahunty moved the question.

Adopted.

Question is on the committee report of inexpedient to legislate.

A roll call was requested by Senator Podles.

Seconded by Senator McLane.

The following Senators voted yes: Oleson, W. King, Heath, Fraser, Dupont, Currier, Roberge, Blaisdell, Bass, Nelson, Colantuono, Podles, Humphrey, J. King, Russman, St. Jean, Delahunty, Cohen.

The following Senators voted no: Hough, Disnard, Pressly, McLane, Shaheen, Hollingworth.

Yeas 18

Nays 6

Committee report of inexpedient to legislate is adopted.

**SB 470-FN-LOCAL**, an act relative to using electronic monitoring devices and community supervision as an alternative to prison. Judiciary committee. Ought to Pass with Amendment. Senator Colantuono for the committee.

**5055L**

#### **Amendment to SB 470-FN-LOCAL**

Amend RSA 651:25-a as inserted by section 1 of the bill by replacing it with the following:

651:25-a Electronic Monitoring Release.

I. Any person who has been committed to the minimum security unit of the state prison or a county jail under a criminal sentence, except as provided in paragraph II, may be released at the request of the department of corrections, upon order by the sentencing court at the time of sentence or at any time during the term of sentence, for the purpose of reducing the cost of incarcerating the person. If released, the person shall be equipped with an electronic monitoring device which shall be used by local and state law enforcement officials to supervise the person's release. The court may order any other terms and conditions of the release. Any day spent in the free community under such a release order shall be counted as a full day toward the serving of the sentence unless otherwise provided by the

court. If a person violates the terms and conditions laid down for his conduct, he shall be returned to the correctional facility upon the order of the department of corrections. Failure of such prisoner to return as ordered shall be considered an escape from official custody. The department of corrections may charge the prisoner a fee to offset the costs of monitoring and supervising the electronic surveillance.

II. Persons convicted to an offense, an attempt or conspiracy to commit an offense, under RSA 318-B:2, II; 318-B:26, I or II; 630:1; 630:1-a; 630:1-b; 630:2; 631:1; 632-A:2; 633:1; 636:1; 642:6; 642:9; 648; 649; 649-A; or 650-A:1, shall not be eligible for electronic monitoring release under paragraph I.

Amend the bill by inserting after section 1 the following and renumbering the original section 2 to read as 3.

2 Submission of Report. The commissioner of the department of corrections shall submit a report detailing the effectiveness of the electronic monitoring release program within one year of the effective date of this act to the president of the senate, the speaker of the house of representatives, and the governor.

### AMENDED ANALYSIS

This bill permits certain prisoners to be released with electronic monitoring devices upon request of the commissioner of the department of corrections and by order of the sentencing court. The sentencing court may require other terms and conditions of the release. The department of corrections may charge the prisoner a fee to offset the costs of electronic surveillance.

This bill also requires the commissioner of the department of corrections to submit a report detailing the effectiveness of the electronic monitoring program.

SENATOR COLANTUONO: This bill allows prisoners who are either in the minimum security unit of the state prison or in the county jail, in other words, the nondangerous ones, classified as such, to be let out of prison and to be put on an electronic monitoring device. The so-called bracelets, as a means of saving money in the corrections system. The amendment on page nine makes it clear that such persons can only be let out upon approval of the court, under a court order. It also sets out a whole series of offenses for which prisoners who have committed those offenses cannot get out of jail, ranging from drug dealing, murder, to first degree assault, rape and so forth. It is an innovative measure. The department is already using this program on a limited basis for work release prisoners and this would allow them to greatly expand the program. We urge ought to pass with amendment.

SENATOR HUMPHREY: Mr. President, truly this is a bill, may I say modestly, and with perfect objectivity as the author, to which both liberals and conservatives and progressives and reactionaries and everyone else between, can rally in good conscience. Here it is, bottom line. We are proposing to let some people out of prison who aren't a danger to society. We are proposing to let them out under the circumstances that they meet certain criteria, that is that they have not committed certain kinds of crimes. A & B, that they leave wearing these electronic devices that permit the Department of Corrections to monitor their whereabouts. I don't think that I have to remind my colleagues that prisons are crowded and becoming more crowded all of the time. I don't think that I have to remind my colleagues that despite the best efforts of the prison staff, most prisons are as dangerous to inmates as they are to security guards. Most prisons turn minor criminals into hardened criminals. Adding insult to this nightmare situation it cost the taxpayers great sums of money and even greater sums when overcrowding requires building a new prison space. Criminals cost society money in two ways; First, the cost is assessed against the victims and to an extent to the society at large. Second, is the cost of incarcerating criminals. It is a double whammy. Society takes it on the chin both times. So I suggest that the time has come to turn the tables on the criminals. Instead of the taxpayers paying the high cost of punishing and rehabilitating offenders in prisons, I suggest that the offenders be made to pay the taxpayers these cost. SB 470 would allow the Department of Corrections greater latitude in using electronic handcuffs as an alternative to expensive incarceration. That is in the case of certain nonviolent prisoners committed to minimum security at the state prison or a county jail. There are a number of commercially available electronic devices that are very good. We heard testimony to their efficacy in committee and were convinced. They are being used elsewhere to very, very limited extent, they are being used in New Hampshire and this bill will encourage their further use. As of a year ago, there were 7,000, roughly, persons nationwide being monitored by this means. Guess how much it cost? You know we talk about the high cost of education, about 5,000 a pupil, guess how much it cost to keep one person, one year, in the state prison? More than three times as much. In fact it is around \$17,000 or \$18,000. It is in that range to keep somebody locked up for a year. Needless to say to the extent that we can save on these costs while still providing society with protection against nonviolent criminals, we should do so and electronic monitoring offers such savings. There are other benefits too. There are certain humanitarian benefits involved. Rehabilitation is an important component of the penal system, and the electronic monitoring maximizes the opportunity for offenders to



maintain employment, attend school, or participate in council. Think about the effect on families when mom or dad who otherwise would be in prison, is at work during the day and or at home taking care of the children. Think of the disruptions of the family lives, the hardship and the heartbreak that can be eliminated in these carefully selected cases involving nonviolent prisoners committed to minimum security, when they can be released wearing these devices. This is the wave of the future. This bill allows us to take advantage, not only of the technology of the future, but the technology of today. It is here. Finally, Mr. President, we discovered when the calendar was finally printed late last night, I guess it was, that in the view of the Department of Corrections, there is one little flaw in the committee amendment and I have discussed this with Senator Colantuono who managed the bill, and he is in support of an amendment. I am not sure how to do this in parliamentary sense, but we want to add one further line to the committee amendment. Which line says . . . How do I do this, Mr. President?

SENATOR DUPONT: You would adopt the amendment and then have a floor amendment drafted to straighten it out, Senator Humphrey.

SENATOR HUMPHREY: Well we have it drafted. So in due course, for the information of Senators, I will offer this amendment. It makes a small change, but an important change in the eyes of the Department of Corrections into which Senator Colantuono agrees. But in the meantime, I do urge the adoption of the committee amendment. Thank you.

Committee amendment adopted.

Recess.

Out of recess.

SENATOR HUMPHREY: Mr. President, I would ask the Senate to consider floor amendment #5121L. Mr. President, to reiterate what I said a moment ago, this is essentially the same amendment that we adopted a moment ago with the addition of one sentence.

Recess.

Out of recess.

SENATOR HUMPHREY: Mr. President, the amendment now pending is the same amendment that was adopted a moment ago with an addition of one line. The Chairman of the Judiciary committee supports this amendment. Senator Colantuono who is ably managing the bill supports it and I urge my colleagues to support it.

Senator Humphrey offered a floor amendment.

5121L

**Floor Amendment to SB 470-FN-LOCAL**

Amend RSA 651:25-a, I as inserted by section 1 of the bill by replacing it with the following:

I. Any person who has been committed to the minimum security unit of the state prison or a county correctional facility under a criminal sentence, except as provided in paragraph II, may be released at the request of the department of corrections, upon order by the sentencing court at the time of sentence or at any time during the term of sentence, for the purpose of reducing the cost of incarcerating the person. If released, the person shall be equipped with an electronic monitoring device which shall be used by local and state law enforcement officials to supervise the person's release. The court may order any other terms and conditions of the release. Any day spent in the free community under such a release order shall be counted as a full day toward the serving of the sentence unless otherwise provided by the court. If a person violates the terms and conditions laid down for his conduct, he shall be returned to the correctional facility upon the order of the department of corrections. Failure of such prisoner to return as ordered shall be considered an escape from official custody. The department of corrections may charge the prisoner a fee to offset the costs of monitoring and supervising the electronic surveillance. **Nothing in this section shall prohibit electronic monitoring for work release under RSA 651:25.**

Floor amendment adopted.

Ordered to third reading.

Senator Pressly (Rule #42).

Senator Nelson in opposition to SB 470.

**SB 320**, an act relative to political advertising by candidates. Public Affairs committee. Ought to Pass with Amendment. Senator Bass for the committee.

4964L

**Amendment to SB 320**

Amend RSA 664:14, I(b) as inserted by section 1 of the bill by replacing it with the following:

**(b) There shall be printed in clear and easily legible letters on all political advertising which is published by or on behalf of each candidate who does not voluntarily agree to limit his campaign expenditures and those expenditures made on his behalf as provided in RSA 664:5-a, the following phrase: "this candidate**

**has not agreed to voluntarily limit campaign expenditures". This phase shall be printed directly below the signature required in subparagraph (a).**

### AMENDED ANALYSIS

This bill requires political advertising which is published by or on behalf of candidates who do not agree to campaign expenditure limitations to state that fact.

SENATOR BASS: Mr. President, this bill requires that candidates who do not agree to the voluntary campaign spending limitations be required to have printed at the bottom, printed but not broadcast material, the following: 'this candidate has not agreed to voluntarily limit campaign expenditures'. If I may quote a distinguished and honorable senior statesman in New Hampshire, I would like to sum up this amendment by saying that, "it is a modest amendment and it is one that liberals, conservatives, progressives and reactionaries can rally around in good conscience." We urge the Senate's adoption of the committee report of ought to pass as amended.

SENATOR HUMPHREY: Senator Bass, I am disappointed in that this is not the language that we agreed on subsequent to our last wrangle over this issue some months ago. I beg your pardon, I have done it again. I looked at what was in front of me instead of the calendar.

SENATOR BASS: Senator Humphrey, I think that I can answer your question though. I don't think that it matters which version that you are using. Can I respond to that question?

SENATOR HUMPHREY: Yes.

SENATOR BASS: The question that we dealt with last session was a disclaimer that was to be placed upon the petition that you have circulated. This is a disclaimer that would be placed upon written campaign literature, so it is a different issue.

SENATOR HUMPHREY: Well still, Senator, do you not see that by the phraseology we create the impression that such candidates are some kind of ogre, whereas if we included in the language something to the effect that this candidate, consistent with his or her rights under the constitution, has not agreed to voluntarily limit campaign expenditures. It puts it in an entirely different context, and in my view, as a much fairer way of phrasing it.

SENATOR BASS: Senator Humphrey, in answer to your question, I would be glad to include that language. It had slipped my mind that we had had this discussion. If the Senate would allow me to have this

bill recommitted to my committee, I would be glad to change the language to reflect the good Senators recommendation.

SENATOR HUMPHREY: That is a very fair-minded offer and I appreciate that. Would the Senator be confident that we could somehow correct this in the House or in conference in lieu of, at this late date, of recommitting?

SENATOR BASS: Well I can't guarantee that the House would do anything, not being a member of that body. In all honesty, Senator Humphrey, if you pass this bill, the House might concur. I seriously doubt that they would, but they might. If they just concurred, if they had a hearing and they just concurred, then there wouldn't be any opportunity to amend it. But if they didn't concur, I would be willing to give you my word that I would incorporate the exact same language that we included on the petition in any final version that came out of this body.

SENATOR HUMPHREY: Well, somehow I am a little worried now, because if they concur we are out of business. Would the Senator allow this to be tabled for a few minutes while a further amendment is drafted?

Recess.

Out of recess.

SENATOR HOLLINGWORTH: I would like to move indefinite postponement if I could.

Recess.

Out of recess.

SENATOR HOLLINGWORTH: I am speaking to the amendment that appears on page nine. I would like to somehow, and I don't know the procedure, make sure that that amendment does not pass. I think that it is not in good policy, and if any of you know me, you know that I have always supported ethics and informed consent and campaign expenditures to be within the guidelines, but this is going far beyond it. I don't know what is going to appear next on our signs if this passes. You know that old camel with his nose under the tent, I can't imagine what we are going to ask to have on signs next. I think that this should be made inexpedient to legislate.

SENATOR COLANTUONO: Senator Bass, this is a question simply dealing with the practicalities of this bill because I am not really sure about the policy, but this bill says that all advertising has to have this phrase and all advertising is defined as, "any communication including buttons or printed materials attached to motor vehicles". So if we pass this bill, are we going to have to have this phrase on a button?

SENATOR BASS: No, Senator Colantuono, you wouldn't, because the words political advertising is modified in the amendment by the term which is published by on or behalf and that is interpreted in meaning published material such as letters, brochures and so forth, not broadcasting. They removed the term broadcasting, thanks to a very constructive suggestion that was made by Senator Nelson.

SENATOR COLANTUONO: Just a follow up. Then it is your interpretation of the word 'published', 'published' isn't defined in the law either?

SENATOR BASS: No.

SENATOR COLANTUONO: Okay.

SENATOR ROBERGE: Senator Bass, does this legislation include road signs?

SENATOR BASS: Yes, I think that it probably would.

Committee amendment fails.

Senator W. King moved to have SB 320 an act relative to political advertising by candidates laid on the table.

Motion to have SB 320 laid on the table fails.

### SUBSTITUTE MOTION

Senator Currier moved to have SB 320 an act relative to political advertising by candidates postponed indefinitely.

SENATOR BASS: I will bow to this request to indefinite postponement. This is really part of my whole Senate experience. I have seen Senator Humphrey on the losing side so often, and I want to enrich my life to know what it is like to be in his position. So I will reluctantly, go along with this motion.

SENATOR NELSON: I just want to remark about indefinite postponement. I want to speak to the motion, Mr. President. I guess the problem that I am having with that motion is it seems so . . . indefinite. No, really, I just want to be clear on ethic issues. We don't just want to postpone indefinitely anything with ethics. I mean, this is the sign bill, I know, but, I mean, this bill, just some of it isn't good. Anyways, I just wanted to say that although I would support that, I think that in this particular instance, what I am trying to say, is that inexpedient to legislate would have been appropriate, in my opinion. Thank you very much.

SENATOR DUPONT: I would also remind the members that an issue that is indefinitely postponed can be brought back before the body on a 2/3 vote of the body, but if you are feeling kind today and

you would rather move it inexpedient to legislate, then you can withdraw your motion, vote down the ought to pass and then come back with an inexpedient to legislate motion. So the question is yours. The question before you is indefinite postponement.

Motion is adopted.

SB 320 is postponed indefinitely.

**SB 329**, an act authorizing the New Hampshire Housing Finance Authority to assist tenants when a manufactured housing park is undergoing condominium conversion. Public Affairs committee. Ought to Pass. Senator Bass for the committee.

**SENATOR BASS:** Mr. President, this bill is the result of a study committee which was established last year to study the problems of condominium conversion in manufactured housing and how to assist tenants in that process. As you all may remember, we have a one-year moratorium on conversion which expires this year. The study committee recommended to our committee, that the New Hampshire Housing Finance Authority's authority be expanded to allow the assistance to tenants in receiving the benefits of the Housing Finance Authority in the process of a conversion so that they will have access, for example, to lower interest loans and so forth. The committee urges the Senate's adoption of its report of ought to pass.

Adopted.

Ordered to third reading.

**SB 355**, an act requiring that deposits for the purchase of manufactured housing be held in escrow accounts. Public Affairs committee. Ought to Pass with Amendment. Senator Cohen for the committee.

**5072L**

### **Amendment to SB 355**

Amend the title of the bill by replacing it with the following:

#### **AN ACT**

requiring that deposits for the purchase or other disposition  
of manufactured housing be held in escrow accounts and  
relative to disposition of tenant's security  
deposits transferred due to foreclosures.

Amend the bill by replacing all after the enacting clause with the following:

1 New Section; Deposits for Purchase or Other Disposition of Manufactured Housing. Amend RSA 331-A by inserting after section 10 the following new section:

331-A:11 Escrow Accounts for Deposits for the Disposition of Man-

ufactured Housing. Any deposit made in regard to any disposition of manufactured housing, by a manufactured housing park owner or dealer, shall be held in escrow by the seller in a special escrow account, designated for this purpose, until settlement or closing, provided, however, if such funds are being held by a real estate broker or attorney licensed under the laws of New Hampshire, they may be placed in that broker's or attorney's regular escrow account and need not be placed in a separate designated account. Such escrow funds shall not be subject to attachment by creditors of the seller including the event of a declaration of bankruptcy by the seller.

2 Rental Security Deposits. RSA 540-A:6, III (c) is repealed and reenacted to read as follows:

(c)(1) Any landlord who turns over to his grantee, his assignee, a purchaser at a foreclosure sale, or the receiver in a foreclosure action the amount of such security deposit with interest due, if any, is thereby relieved of liability to the tenant for repayment of the deposit. In any property which is occupied at the time ownership is legally transferred, the new owner of the property is responsible for the disposition of the security deposits of the occupants, pursuant to RSA 540-A:7, regardless of whether the transfer actually turned over the security deposits, unless:

(A) The new owner produces a sworn affidavit from the transfer representing that the security deposits which were collected from the occupants were either returned to them, or that no security deposit was collected from them;

(B) An affidavit from a trustee in bankruptcy or a foreclosing mortgagee, from whom all property was purchased, setting forth the efforts made to obtain from the property owner the security deposits, or an affidavit complying with subparagraph III(c)(1)(A), and that these efforts were unsuccessful; or

(C) Before the expiration of the tenancy, the new owner transfers the security deposit to another pursuant to RSA 540-A:6, III(a) and gives the requisite notice pursuant to RSA 540-A:6, III(b).

(2) A receiver shall hold the security subject to its disposition as provided in an order of the court to be made and entered in a foreclosure action.

3 Effective Date. This act shall take effect January 1, 1993.

### AMENDED ANALYSIS

This bill requires that any deposit for the purchase or other disposition of manufactured housing be held in an escrow account and that such account shall not be subject to attachment by creditors in the event of bankruptcy of the seller of the manufactured housing.

The bill also makes the new owner of rental property acquired through a foreclosure sale responsible for the disposition of security deposits of the tenants of such property.

SENATOR COHEN: Everyone that spoke at the committee hearing spoke in support of SB 355, there was no opposition. This bill would require the owner to hold the deposit; and protect the tenants if the owner should happen to go bankrupt, the purchaser can still get money back. The amendment as printed up in the calendar protects the new owner from liability and also it protects and requires the new owners to inquire about the status of the deposits so that it also helps protect the tenants as well. The committee urges a vote of ought to pass.

Committee amendment adopted.

Ordered to third reading.

Recess.

Out of recess.

**SB 467-FN-L**, an act changing the interest rates on delinquent property taxes and subsequent taxes and requiring a certificate of tax payment prior to the moving of a building or structure. Public Affairs committee. Ought to Pass with Amendment. Senator Delahunty for the committee.

**5071L**

### **Amendment to SB 467-FN-LOCAL**

Amend the bill by replacing all after the enacting clause with the following:

1 Interest Rate Changed. Amend RSA 76:13 to read as follows:  
76:13 Interest.

**I. Interest at [12 percent] a rate determined by the department of revenue administration pursuant to paragraph II of this section** shall be charged upon all taxes except resident taxes, except as otherwise provided by statute, not paid on or before December 1 after their assessment, which shall be collected from that date with the taxes as incident thereto, except in the case where a tax bill sent to the taxpayer on or after November 2 and before April 1 of the following year interest shall not be charged until 30 days after the bills are mailed. Interest due that amounts to less than \$5 may be waived by the collector, with the approval and consent of the board of selectmen and the board of assessors, if in his judgment the administrative and collection costs involved do not warrant collection of the amount due. The tax collector shall state on the tax bill the date from which interest will be charged and such date shall be de-



terminated by the day the collector sends out the last tax bill on his list. The collector shall notify the board of tax and land appeals in writing of the date on which the last tax bill was sent.

**II. The interest rate imposed on delinquent property taxes for the prior year pursuant to paragraph I shall be calculated by the department of revenue administration on or before July 1 by adding 8.5 points to the past 12 months' average interest rate paid on 90-day Treasury notes.**

2 Payment of Subsequent Tax. Amend RSA 80:37 to read as follows:

80:37 Payment of Subsequent Tax.

I. The purchaser of real estate at any tax sale may pay to the collector any tax assessed upon the real estate subsequent to that for which it was sold and the collector shall, within 30 days after such payment, notify the register of deeds thereof, giving the date and the amount of such payment and the name of the person so paying together with the date of the tax sale, the name of the person taxed and a description of the property sold as shown in the report of sale recorded in the registry of deeds. The collector of taxes shall receive \$1 for such notice to the register of deeds of the subsequent payment plus \$1 to be paid to the register of deeds. The purchaser, within 30 days of payment of the subsequent tax, shall personally, or by certified mail, notify in writing any mortgagee who was notified of his purchase at the tax sale of this payment of the subsequent tax. The purchaser paying the subsequent tax shall receive the same fees prescribed for notifying the mortgagee of his purchase at the tax sale to be included in his costs to be paid by the person making redemption, except that when a town is a purchaser at a tax sale and the town pays a tax subsequent to that for which the real estate was sold and the selectmen direct the collector of taxes as agent for the town to give notice of payment of a subsequent tax to any mortgagee who was notified of the purchase by the town at the tax sale, the collector shall be paid the sum of \$5 for this service. Any amounts so paid on account of subsequent taxes, together with interest thereon at [the rate of 18 percent per annum] **a rate determined by the department of revenue administration pursuant to paragraph II of this section** from the date of payment shall, in addition to the purchase price at the time of sale with accrued interest and costs, be paid by the person making redemption.

**II. The interest rate imposed on subsequent property taxes for the prior year pursuant to paragraph I shall be calculated by the department of revenue administration on or before July 1 by adding 8.5 points to the past 12 months' average interest rate paid on 90-day Treasury notes.**

3 Redemption. Amend RSA 80:69 to read as follows:  
80:69 Redemption.

I. Any person with a legal interest in land subject to a real estate tax lien may redeem the same by paying or tendering to the collector, at any time before a deed thereof is given by the collector, the amount of the real estate lien, with interest at [18 percent per annum] **a rate determined by the department of revenue administration pursuant to paragraph II of this section** upon the whole amount of the recorded lien from the date of execution to the time of payment in full, except that in the case of partial payments in redemption made under RSA 80:71, the interest shall be computed on the unpaid balance, together with redemption costs and costs for identifying and notifying the mortgagees, if any. In case the tax collector who executed the tax lien against the property in question shall have died, become incapacitated, been removed from office or removed from the town or city or shall have been discharged from his bond by the selectmen or assessors, then the person with the legal interest in redeeming the property may tender such sums to the tax collector then in office of said city or town. Upon advice from the selectmen or assessors that the amount tendered is the correct amount due, the tax collector shall accept said amount for the redemption of the property.

**II. The interest rate imposed on subsequent property taxes for the prior year pursuant to paragraph I shall be calculated by the department of revenue administration on or before July 1 by adding 8.5 points to the past 12 months' average interest rate paid on 90-day Treasury notes.**

4 Payment of Subsequent Tax. Amend RSA 80:75, III to read as follows:

III. When a municipality is the lienholder and the municipality pays a subsequent tax and the selectmen direct the collector of taxes, as agent of the municipality, to give such notice of said payment to any owner and to any mortgagee as provided above, the collector of taxes shall receive the same fees provided for the lienholder for his service. The amount of subsequent taxes paid, together with interest on such taxes at [the] a rate [of 18 percent per annum] **to be determined by the department of revenue administration pursuant to paragraph IV of this section** from the date of payment shall, in addition to the tax lien amount at the time of execution with interest and costs, be paid by the person making redemption.

**IV. The interest rate imposed on subsequent property taxes for the prior year pursuant to paragraph I shall be calculated by the department of revenue administration on or before July 1 by adding 8.5 points to the past 12 months' average interest rate paid on 90-day Treasury notes.**

5 New Section; Certificate of Paid Property Taxes on Buildings or Structures to be Moved. Amend RSA 72 by inserting after section 7-b the following new section:

72:7-c Certificate of Paid Property Taxes. No building or structure that is taxed as real estate shall be moved from the location where it was last taxed without a certificate from the assessors of the city or the selectmen of the town that all property taxes owed have been paid in full. Any person who fails to comply with the provisions of this section shall be guilty of a misdemeanor.

6 Effective Date. This act shall take effect April 1, 1992, at 12:02 a.m.

SENATOR DELAHUNTY: This bill actually comes in two parts. The first part changes the interest rate in delinquent property taxes and subsequent taxes. The bill also requires that certificate that all property taxes be paid in full before any building or structure can be moved from the location where it was last taxed. The reason for the bill is several, or are several. Interest rates used by financial institutions have declined to a low which makes the 18 percent rate charged on unredeemed taxes unfair and could be considered usury. Actually, the first year in most towns is 12 percent and then after the first year it grows to 18 percent. Interest charge should be a penalty to encourage payments of taxes, it should not be considered as a source of income. Us, the officials, are now mainly concerned with the citizens ability to pay their taxes and retain their homes. Excessive penalties contribute to forfeiture by tax deed. Adopting the formula will keep pace to the system with money market rates. The second part corrects a void in the law which currently allows the removal of a structure owned and taxed to a person who does not own the land on which the structure is placed. The selectmen of various communities that have had to deal with this problem, had this researched by attorneys. The potential exists for it to become a substantial problem for many New Hampshire towns if not corrected by legislation.

Committee amendment adopted.

Ordered to third reading.

**SB 468-FN**, an act relative to the authority of the ethics committee and relative to reporting gifts and honorariums. Public Affairs committee. Ought to Pass with Amendment. Senator Bass for the committee.

**5063L**

### **Amendment to SB 468-FN**

Amend the title of the bill by replacing it with the following:

#### **AN ACT**

relative to the jurisdiction of the ethics committee.

Amend RSA 14-B:2, I(g) as inserted by section 2 of the bill by replacing it with the following:

(g) [The attorney general or his designee, who shall be an attorney employed by the department of justice] **One retired superior or supreme court justice, appointed by the New Hampshire Bar Association.**

Amend the bill by deleting section 6-8 and renumbering section 9 to read as section 6.

### **AMENDED ANALYSIS**

This bill limits the jurisdiction of the ethics committee to legislators and legislative officers. Under current law, the ethics committee also has jurisdiction over legislative employees. The bill removes the attorney general from membership on the ethics committee, and replaces him with a retired superior or supreme court judge.

Senator Bass moved to have SB 468-FN an act relative to the authority of the ethics committee and relative to reporting gifts and honorariums laid on the table.

Adopted.

### **LAIID ON THE TABLE**

**SB 468-FN** an act relative to the authority of the ethics committee and relative to reporting gifts and honorariums is laid on the table.

**CACR 30**, an act Relating To: election of federal and state representatives. Providing That: the terms of office for the members of the United States Congress from New Hampshire and for the members of the New Hampshire house and senate shall be limited to 12 years and 10 years, respectively. Public Affairs committee. Ought to Pass with Amendment. Senator Bass for the committee.

5076L

**Amendment to CACR 30**

Amend the title of the resolution by replacing it with the following:

**CONCURRENT RESOLUTION PROPOSING CONSTITUTIONAL AMENDMENT**

**RELATING TO:** election of federal and state representatives.

**PROVIDING THAT:** the terms of office for the members of the United States Congress from New Hampshire and for the members of the New Hampshire house and senate shall be limited to 12 years.

Amend the resolution by replacing all after the resolving clause with the following:

I. That article 14 of the second part of the constitution be amended to read as follows:

**Art. 14 Representatives, How Elected, Qualifications of.** Every member of the house of representatives shall be chosen by ballot; and, for two years, at least, next preceding his election shall have been an inhabitant of this state; shall be, at the time of his election, an inhabitant of the town, ward, place, or district he may be chosen to represent and shall cease to represent such town, ward, place, or district immediately on his ceasing to be qualified as aforesaid. **No person shall be elected to or serve as a state representative, nor shall the secretary of state or other** authorized official accept or certify a person's nomination petition, nor print or cause to be printed on any ballot or ballot label for the office specified, the name of any person, if the person, by the end of the current term of office, shall have served, or but for resignations, would have served 12 or more years as a state representative, except that any time served as a state representative prior to December 1, 1986, shall not be counted for purposes of this term limit.

II. That article 27 of the second part of the constitution be amended to read as follows:

**Art. 27 Election of Senators. The freeholders and other inhabitants of each district, qualified as in this constitution is provided, shall biennially give in their votes for a senator, at some meeting held in the month of November.** No person shall be elected to or serve as a state senator; nor shall the secretary of state or other authorized official accept or certify a person's nomination petition, nor print or cause to be printed on any ballot or ballot label for the office specified, the name of any person, if the person, by the end of the current term of office, shall have served, or but for resignations, would have served 12 or more years as a state senator; except that any time served as a state senator prior to December 1, 1986, shall not be counted for purposes of this term limit.

III. That the second part of the constitution be amended by inserting after article 95 the following new article:

[Art.] 95-a [Limitation on Election of Congressional Representatives.] No person shall be elected as a representative from New Hampshire to the United States Senate or to the United States House of Representatives by the voters of this state for 12 or more years after November 1994.

IV. That the above amendment proposed to the constitution be submitted to the qualified voters of the state at the state general election to be held in November, 1992.

V. That the selectmen of all towns, cities, wards and places in the state are directed to insert in their warrants for the said 1992 election an article to the following effect: To decide whether the amendments of the constitution proposed by the 1992 session of the general court shall be approved.

VI. That the wording of the question put to the qualified voters shall be:

Are you in favor of amending the Constitution to limit the terms of office for the members of the United States Congress from New Hampshire and for the members of the New Hampshire house and senate to 12 years?

VII. That the secretary of state shall print the question to be submitted on a separate ballot or on the same ballot with other constitutional questions. The ballot containing the question shall include 2 squares next to the question allowing the voter to vote "Yes" or "No." If no cross is made in either of the squares, the ballot shall not be counted on the question. The outside of the ballot shall be the same as the regular official ballot except that the words "Questions Relating to Constitutional Amendments proposed by the 1992 General Court" shall be printed in bold type at the top of the ballot.

VIII. That if the proposed amendment is approved by 2/3 of those voting on the amendment, it becomes effective when the governor proclaims its adoption.

### AMENDED ANALYSIS

This constitutional amendment concurrent resolution limits the number of terms which a United States Senator and a United States Representative may serve. The resolution also limits the number of terms which members of the New Hampshire house and senate may serve. No United States Senator from New Hampshire shall serve 12 or more years in the United States Senate, and no United States Representative from New Hampshire shall serve 12 or more years in the United States House of Representatives after November 1994.

No member of the New Hampshire house of representatives or New Hampshire senate shall serve 12 or more years in the legislature, except that any time served prior to December 1, 1986, shall not count for the purposes of the term limit.

SENATOR BASS: With my record today on Public Affairs bills, I am not sure that I should continue, but this bill essentially limits terms of Senators, Representatives and members of Congress. The amendment changes the 10 year provisions for state officials to 12 years, so that it is the same as federal officials. There is a grandfather clause in the constitutional amendment that excludes any individual who is elected prior to 1996, excuse me, 1986 and prior. I would like to make a couple of very brief remarks about this concurrent resolution. In my opinion, I don't think that there is any single issue that we will consider here in this Senate that will have a more ultimately, a longer range impact on the affairs of this country than this concurrent resolution. I would like to address myself for a minute to the situation in which exists on the federal level right now, because the problems relating to term limitation in New Hampshire are not significant at all, in my opinion, but on the federal level, it is a serious problem. Incumbents in this country have an extraordinary advantage over challengers and this isn't obviously something that has occurred recently or has not been around for many years. As we have heard over and over again, 96 percent of all congressional incumbents were elected in 1990 and yet the polls that have been taken nationwide, 69 percent of the public think that congress is doing a bad job. So there is some problem here. There is a problem of creditability between what the public thinks about congress and the people who are being elected and reelected. In my humble opinion, congress has changed. Congress has changed since the 70's when I used to work there. It is my observation that there are no longer Republicans in Washington, there are no longer Democrats, there are no longer Liberals or conservatives or progressives or reactionaries, there are incumbents. I think that the statistics are really rather shocking about the kind of money that was raised. You heard me in this body talk about campaign spending limitations. In my own perspective, campaign spending limitation is only a small part of the solution. This is the real solution, limiting terms. If we were able to limit terms, we wouldn't need campaign spending limitations. If this country limited terms, we could eliminate all of the legislation that I have been working on for the last couple of years. In 1990 incumbent congressmen raised \$239,000,000 and challengers raised \$38,000,000. Two House members, just two House members in the last five weeks in 1990 raised \$3,400,000. That was more money than all 331 challengers raised during that period of time.

Now where did the money come from? We know where it came from, it came from political action committees and special interest. In 1990 the political action committees gave \$87,000,000 to incumbents and \$7,000,000 to challengers. So where are the Democrats and the Republicans and the Liberals and the Conservatives? These political action committees don't care what you are, they don't care. All that they care is that you are there; and if they give you money, you vote their way. Is that really a situation where we are presenting people with real choices in elections? We are not. The fact is, is that there is no process of choice. Money is what decides if you are in office, money is it. The money doesn't come from you or me, it comes from political action committees and special interest groups. We don't really have serious elections anymore in this country. And by the way, as I said a minute ago, this is not a phenomenon that hasn't been around for a long time, in 1980 challengers raised \$36,000,000 from political action committees and in 1990 they raised \$38,000,000, so it went up \$2,000,000, the amount of money that the challengers raised. Incumbents on the other hand, in 1980 raised \$72,000,000 and in 1990 raised \$181,000,000. So there has been a planned effort over the last 10 years to funnel money into incumbents because special interests are the beneficiaries. Now let us talk for a second about the constitutionality of this. We know that this constitutional concurrent resolution is probably in violation of the U.S. Constitution, but it is time that we, the states, took this matter into their own hands. We have a tremendous interest in this country in doing something to prevent congress from turning into a self-perpetuating incumbent feeding body that we cannot control as people. I think that the very vitality of this country is at stake, and I hope, that just because we can't change the system through congress that we could do it on a statewide basis. If enough states get behind this, we may be able to do something nationally. I urge my colleagues to adopt this. This is a good amendment. This is a Resolution that will have long term, positive effects on our system. We have heard mention that if we do this great statesmen, such as Senator Bridges and others, wouldn't have been able to do what they did for New Hampshire. But the fact is, that if we have term limitations in this country, everybody will be operating under the same limitations, and the result will be that the good effective responsive Senators will be the ones that are successful, not the ones that have just been there forever and have lost every vestige of having any shred of good ideas. So I urge the body to adopt this. I know that it is tough, it is not a partisan issue, it is not directed against Republicans or Democrats, it is directed against our system and its need to bring new people and new ideas to the process.



SENATOR W. KING: Mr. President, for a minute there I thought that Jerry Brown was standing there behind me, and look at him, he even looks like him all dressed in white.

SENATOR BASS: I need a foot more in height.

SENATOR W. KING: I rise in opposition to the motion and I just want to say two things. Number one, I agree with Senator Bass when he says that money is the problem. Money is the problem, not the amount of time served, money. We had Public Financing or if we had reasonable campaign spending limits, so that people could afford to run a race and didn't feel as though they had to raise millions and millions of dollars in order to compete with the incumbents, we would be able to solve this problem very quickly. We have term limitations in this country, and it is called an election. If we don't believe in the American people enough to know that they are capable of making these kinds of decisions themselves, without us sticking some self-limiting proposal in there, then I think, that we all ought to go home. I happen to believe in the people of this state, and believe in the people in this country, and believe that they are capable of deciding who should and should not stay in without artificial limitations.

SENATOR NELSON: Senator Humphrey, over the last couple of months, as you know, we have had a lot of presidential campaigns in the state, as a result, we have also had the United States Senators visiting, and I have had the opportunity and the privilege to meet several of them, actually, and the question that I asked them is what did they think of term limitations? One of the objections that I heard from some of them was "that it wasn't a bad idea, but the fact of the matter is, is that one would lose their seniority in that body and especially a small state would be negatively effected," I just wondered perhaps, if you didn't mind me being personal, based on your experience down there, would you mind answering or remarking on that question, would you believe?

SENATOR HUMPHREY: I would be happy to answer that question. Let me answer the question by saying I very strongly support this bill for reasons which I will attempt to announce in a moment when I have the floor. Yes, everyone would be subject, I think the Senator, I don't know what I think . . . The Senators question seems to contain the assumption that members of congress is to pillage the treasury to the disadvantage of other states. I don't think that that is the role of members of congress at all and I don't think the argument, which evidently you heard is a very strong argument, to weigh the benefits against the admitted liabilities.

SENATOR NELSON: Senator Humphrey, let me be more direct. I wasn't making any assumption in the question. I guess I didn't articulate it the way that I wanted to. It would appear to me that seniority has its merits, both at the local and state level, people become familiar with the process and they can work through it. Sometimes senior Senators are able to do better, or if you will, get more for their district than, say a freshman Senator, not always the case, but I am just saying.

SENATOR HUMPHREY: Does the Senator think that is good as a matter of public policy?

SENATOR NELSON: No. Wait a minute, I am asking the question here . . .

SENATOR HUMPHREY: Sorry.

SENATOR NELSON: So, what I am trying to get at is this, so from talking to these Senators and listening to them as closely as I could, what I am asking you is, in a body the size of the Senate or the House, would it be a negative not to have someone who knows the ropes or say that 35 states enacted something similar to this, like California or Texas, would it have a negative effect on a small state like New Hampshire, if we put limited terms in, based on your being down there?

SENATOR HUMPHREY: Yes. Well, I think that if that many states were limited, the terms of their members of congress than in the case of those few states that did not, where those Representatives of those states that did not, sought unreasonable advantages, the smaller states sort of speak, the states that had, and those that had enacted these limits, would prevail under the senario that you just described, 35 having limited.

SENATOR NELSON: In your experience if you don't mind, down in Washington, did you see Senators with seniority getting more for their districts then . . .

SENATOR HUMPHREY: Yes. Yes. And a current example is Senator Robert Bird of West Virginia who is the Chairman of the Appropriations committee, always the most powerful committee in any legislative body, who has been there 30 something years and is moving about half of the federal government to the state of West Virginia. If you like that you probably should impose this measure. What I am saying is, that Senators with great seniority, yes, can rape and pillage the treasury at the expense of the other states, yes.

SENATOR NELSON: Yes. Thank you, Senator Humphrey, thank you, Mr. President.

SENATOR BASS: Senator Wayne King, you mentioned that you felt that you rose in opposition to term limits for congressmen. You felt that term limits were a bad idea. Do you also oppose term limits for Presidents?

SENATOR W. KING: The current one?

SENATOR BASS: Anyone.

SENATOR W. KING: Well, I think that is a moot issue. That has already been decided. You want to fight that issue, Senator Bass, I guess you better bring in another bill.

SENATOR HUMPHREY: Mr. President, I would like to speak. It is really hard to add anything to what Senator Bass has said, he has put it really well. I would make one correction and that is the reelection rate for the members of the House of Representatives in the last election was 98 percent not 96. As our friend, Senator W. King, suggests, that we can reform congress by reforming campaign spending, by enacting laws that somehow restrict campaign spending. Well, I am here to say, for whatever it is worth, that you can't bind in congress with more laws, in the first place congress is a collection of very clever people. They will find ways to get around the laws, they will evade the law. If they can't do that they will change the law. If they can't do that they will just ignore it. I mean just look at these budget laws. Congress doesn't obey those, congress changes them. When those laws become inconvenient, congress cooks the books so that the numbers fit the law even if they are not truthful. You can't bind congress with mere law as you can bind the rest of us mortals with law, you can only bind congress with an amendment to the constitution. The essential problem, I think, is that anyone who holds any office for any great length of time, inevitably, in my opinion, to some extent or another, loses his or her idealism, and that is replaced in equal measure by cynicism and self serving and the urge to be reelected ad infinitum. That in turn leads to this stultification and enormous power resting in the hands of those who can hang on forever. The Chairman of the Appropriations committee in the House has been in Congress for 51 years. Does anybody think that he has any new ideas or has an ounce of idealism left or any idea of what the real world is like after 51 years in Congress? His counterpart in the Senate, as I pointed out, has been there, I think, 36 years or something like that. Yes it is true, members of congress leave on their own, sometimes. But it doesn't happen very often that they are defeated. Yes, they leave when they die, yes, they leave when they're indicted, yes, they occasionally get defeated, but most of all, they leave when they are damn well ready to leave. That inevitably leaves in the hands of those who decide forever and ever and ever, enor-

mous powers by which they can move half of the federal government to the state of West Virginia like Senator Bird has attempted to do today, it seems. Obviously I am exaggerating. But his pork barreling, ladies and gentlemen, is utterly shameless. I mean it is just breathtaking. And the only way to deal with it is to infuse on a regular basis, to require on a regular basis, the infusion of new people, new idealism, fresh air, fresh ideas and that is what this will do. I have to disagree respectfully, with my colleague in this matter, Senator Bass, he doesn't think that this would be consistent with the federal constitution. I think the worst case that you could make about this is that it is unclear. This is now a novel approach, it is just now being tried. Colorado just enacted something very much like this and we can be sure that it will be tested in the courts, and ultimately decided. But so far this is so new and novel that it hasn't been definitely tested as yet. So I think that the worst thing that you can say is that we are not sure; however there is a strong body of opinion among legal experts and academics that because of the ninth and tenth amendments, which are parts of the bill of rights, address the rights reserved to the people. The ninth amendment reads "the enumeration of the constitution of certain rights, in the constitution of certain rights shall not be construed to deny or disperse others retained by the people." The tenth amendment reads "the powers not delegated to the United States by the constitution nor prohibited by it to the states are reserved to the states, respectively or to the people." That is the basis on which many experts believe that this kind of effort is constitutional. Let me just finally point out as I did in earlier debate that it used to be that states, I mean the state legislatures, if indeed it was the state Senates, I am not sure which, maybe somebody knows, either the states Senate or the state Legislature used to elect U.S. Senators. They actually used to instruct them. They not only elected them, but they told them how to vote. If you want a precedent for the legislatures interfering shall we say, interposing themselves, perhaps is a better word, in the federal legislature, it is there a plenty. I believe that this is constitutional and I hope that members will support it. Someone might ask, well why do we want term limits for members of the state legislature? Again, I think, this body compares so favorably to the congress that it is hard to even express the comparison. Still I think that it is well that we have a turnover that people do get a little tired and do get a little cynical and get a little less idealistic, some more than others. I think on a whole it would be good to have this kind of ventilation in government which would assure us idealism and fresh ideas.

SENATOR J. KING: Senator Humphrey, would you say that excess campaign funds raised by the individual has no effect on who is being elected?

SENATOR HUMPHREY: No, I quite agree that, as Senator Bass pointed out, that all this money is not spent for by the donors, the big donors, those who band together and form packs. It is not given purely out of idealism, shall we say, it is given in hopes that the recipient will at least be receptive to approaches by the donors and given in the hopes really that he or she will vote his or their way.

SENATOR J. KING: Would you classify pork barreling with this legislation of pork barreling when it comes to raising funds and having a kitty there that has lasted for 100 years? Is there any similarity between the two, do you think?

SENATOR HUMPHREY: Yeah. I think there is a common thread that runs through all that so much disgusts people about the congress, and the way that people get elected, and in the way that they get reelected, and the way that they kowtow, shall we say, to those who financially, and in a big way, support their election, yes.

SENATOR SHAHEEN: Senator Bass, you talked about seeing a report where most of the people in the country felt that congress was not adequately representing them, is that how you put it?

SENATOR BASS: That it was a New York Times poll that was taken in 1991 that stated that 96 percent, no wait, that is the other statistic. That 69 percent of the public said that they disapproved of the job that congress was doing.

SENATOR SHAHEEN: Isn't it true that, I am not sure if this poll asked the question, but other studies that I have seen that ask that question, that the majority of people also thought that their own particular congressman was doing a good job?

SENATOR BASS: That is correct.

SENATOR SHAHEEN: And I guess my point is, that that decision ought to be left up to the people, to the elector to decide whether they think their congressman is doing a good job, and if they want to elect them or not. That is a would you believe?

SENATOR BASS: Yeah, right. Senator Shaheen, I appreciate your question, and it is an interesting sort of dichotomy, but the fact is, and this gets down to my concern about campaign spending as well. That it doesn't take good ideas to win, it takes money. I am not going to suggest that the public is deceived by their own congressional delegation. But the fact is, that when you have \$200,000, \$300,000 or \$400,000 to buy television time and other means of communication to

persuade your district that you are gods gift to man and women, and your challenger has nothing to do that with, then the result is a perception that your congressman may be doing a good job. But the fact is, that it is very difficult for challengers to present the same kind of picture as incumbents do. And the fact is, that incumbents now because of the way that the process has changed, are fundraising 365 days a year. Both years that they are in the office in congress, and congress is no more than a gigantic political fundraising machine.

SENATOR SHAHEEN: So, Senator Bass, what you are acknowledging is that money really is the problem, it is not the amount of time that people are in congress, is that correct?

SENATOR BASS: Well, both are problems, but one is the solution to the other. Money is indeed a problem, and as Senator Shaheen well knows, I have been working tirelessly for the last three years to try and put some limit on runaway campaign spending. But the one way that you are barring doing that is because the Supreme court won't allow us to do that by mandate. If you limit terms then you limit the effect that the political action committees have on keeping people in office. Because once the original reaches his or her last term, a new person has to come into office and the political action committee lose their effectiveness, and the power of the incumbency is thereby reduced.

SENATOR SHAHEEN: So what we are saying is that we don't have guts to limit the amount of money that goes into the campaigns and so we are going to go through the back door and limit the amount of time that people can serve, is that what you are saying?

SENATOR BASS: No, I would like to come through the front door and limit campaign spending which was done in New Hampshire for 72 years. Unfortunately, the Supreme court in a case called Buckley versus Valeo in 1978 told us that we couldn't limit our own campaign spending which was most unfortunate. The result is that we have to use other vehicles. We as states, have to take this process back into our own hands now, because the U.S. Congress won't act to limit their own power and it is very unfortunate.

SENATOR W. KING: Senator Shaheen, I think that you have made the point quite well that money is the major contributing factor here. Senator Bass said that, essentially, money is the whole issue. I value your judgement as a person in this chamber who is probably the best known as being a political operative in the past.

SENATOR SHAHEEN: You had to say that . . .

SENATOR W. KING: There is a saying that I have heard quite frequently among political analysts and those who run campaigns recently and that is that "message beats money every time as long as there is a reasonable amount of money there." Would you agree with that?

SENATOR SHAHEEN: I would. I think that we can cite a number of campaigns in the last decade where the message was the winner, not the amount of money that the candidate spent.

A division is requested.

Yeas 11

Nays 10

Committee amendment adopted.

SENATOR HUMPHREY: Mr. President, the difference between, well we just adopted the amendment right?

SENATOR DUPONT: Yes.

SENATOR HUMPHREY: Well it is still worth saying that the only difference between the original bill and the amendment is that the amended version limits the terms for state legislators and federal legislators to 12 years each side, whereas the original bill limited state legislators to 10 and federal legislators to 12. It is a tiny difference.

Recess.

Out of recess.

SENATOR DISNARD: In the past it has been the precedent here that it would be a percentage of elected Senators, not those voting in attendance, correct?

SENATOR DUPONT: Senator, it has been the tradition of this body that when a 3/5 or 2/3 vote is required, it is of the total number of members in the body, not those physically present.

SENATOR DISNARD: Thank you.

Question is on ordering to third reading.

A 3/5 vote is required.

A roll call is required.

The following Senators voted yes: Fraser, Dupont, Currier, Bass, Nelson, Colantuono, Podles, Humphrey, Russman, St. Jean, Delahunty.

The following Senators voted no: Oleson, W. King, Hough, Disnard, Roberge, Blaisdell, Pressly, J. King, Shaheen, Hollingworth, Cohen.

Yeas 11

Nays 11

The motion to order to third reading fails.

Senator Podles moved to have CACR 30 an act Relating To: election of federal and state representatives. Providing That: the terms of office for the members of the United States Congress from New Hampshire and for the members of the New Hampshire house and senate shall be limited to 12 years and 10 years, respectively laid on the table.

Adopted.

### LAID ON THE TABLE

CACR 30 an act Relating To: election of federal and state representatives. Providing That: the terms of office for the members of the United States Congress from New Hampshire and for the members of the New Hampshire house and senate shall be limited to 12 years and 10 years, respectively is laid on the table.

**HB 1100-FN-L**, an act establishing a housing assistance trust fund. Public Affairs committee. Ought to Pass with Amendment. Senator Bass for the committee.

**4994L**

### Amendment to HB 1100-FN-LOCAL

Amend RSA 204-C:84 as inserted by section 1 of the bill by replacing it with the following:

204-C:84 Rulemaking. The authority shall adopt rules, pursuant to RSA 204-C:53, governing the housing assistance trust fund. Such rules shall include:

I. The type of housing assistance payments to be supported by the fund.

II. Qualifications of persons and families eligible to receive direct housing assistance payments.

III. Eligibility for matching grants to local governments and local public housing authorities.

IV. Any other matter necessary for the administration of this subdivision.

Recess.

Out of recess.

SENATOR BASS: HB 1100 permits the New Hampshire Housing Finance Authority to establish a Housing Assistance Trust Fund. It doesn't require any appropriation from the state. The fund would be



capitalized with donations from private persons, grants and so forth. It was requested by the Housing Assistance Fund in order to permit them to expand their programs from organizations that would otherwise make grants to other institutions. The committee urges your support of the committee recommendation of ought to pass with amendment. By the way, the amendment simply changes a reference in the rulemaking procedure to the New Hampshire Housing Assistants Authority's own rulemaking process.

SENATOR W. KING: Senator Bass, in the last session, didn't we make some changes? There were some tax credit changes that related to banks that gave housing to non-profit organizations. Would this make the Housing Finance Authority of the trust fund within the Finance Authority eligible under the terms of those tax credits?

SENATOR BASS: As I recall, Senator King, that was a franchise tax credit, a bank franchise tax credit to a single entity and it was something like the Community Housing Trust Fund, not the New Hampshire Housing Finance Authority, it was a different entity. It was a private non-profit corporation established and I cannot remember the exact name.

SENATOR W. KING: This would not be eligible for . . .

SENATOR BASS: I am not sure that we are talking about the same thing. Nobody is getting, oh, I see what you are getting at.

SENATOR W. KING: What is the need?

SENATOR BASS: The need is that if the New Hampshire Housing Finance Authority needs a vehicle to accept donations. Just in general, to apply to the government to apply for grants, and to accept donations that funnel any resources that it receives into its low income program. Apparently, according to Dean Kristen, they have been able to find or they see the potential for further resources that are outside the state and they want a vehicle to accept that.

SENATOR W. KING: Thank you.

Committee amendment adopted.

Ordered to third reading.

**HB 1328-FN**, an act relative to the fiscal responsibilities of the county commissioners and the county convention for capital expenditures in Rockingham county. Public Affairs committee. Ought to Pass with Amendment. Senator Bass for the committee.

4995L

**Amendment to HB 1328-FN**

Amend RSA 24:21-b, I(b) as inserted by section 1 of the bill by replacing it with the following:

**(b) In Rockingham county only, the county commissioners shall, in addition to the information required in subparagraph (a), annually prior to January 15 deliver or mail to each member of the county convention who will be in office on the date that appropriations are voted, their estimate of capital expenditures which they are requesting to be expended in the following fiscal year, when the total project amount is in excess of \$50,000. The capital expenditure request shall list estimates of the costs of land, construction, furnishings, and equipment. The request shall also include the square footage, estimates of annual operating and maintenance costs, program descriptions, the number of people involved, and the estimated amount of time needed to complete each project.**

SENATOR BASS: This bill was a bill that was supported by the Rockingham county delegation. All that it does in essence, is require that the county submit to the county delegation a report annually, indicating what capital expenditures that they plan to make that will be in excess of \$50,000. The committee urges your adoption of the committee report of ought to pass as amended.

SENATOR HOLLINGWORTH: Senator Bass, am I on the right bill, 1328?

SENATOR DUPONT: That is right, Senator.

SENATOR HOLLINGWORTH: I am sorry. There was so much commotion going on over here that I couldn't hear what was going on. What does that have to do with Rockingham county expenditures?

SENATOR BASS: Well, Senator Hollingworth, it changes RSA 2421:b. It is a section that deals with rights, and privileges, and so forth, relating to Rockingham county, they have one for Hillsborough county and other counties. What the county delegation wants to do is to require the county commissioners to give the delegation sort of a capital budget report, annually, so that they know what the intentions are of the commissioners, prior to the termination or the end of the budget process.

SENATOR HOLLINGWORTH: Were the County Commissioners in support of this?

SENATOR BASS: Yes. Oh, the County Commissioners? I would have to check my record, I don't have my book here. But I do know

that nobody appeared in opposition to the bill. It was the same day that we were dealing with the other Rockingham county bill which had to do with the election of the officers and there was one County Commissioner there, Mrs. Walker. I don't recall her speaking, but she may have spoken in favor of it, but I don't recall. The County Commissioners knew about it.

SENATOR HOLLINGWORTH: Thank you.

Committee amendment adopted.

Ordered to third reading.

**SB 309**, an act prohibiting the distribution of condoms to persons 21 years of age or younger on state property or in schools. Public Institutions, Health and Human Services. Ought to Pass with Amendment. Senator J. King for the committee.

**5061L**

### **Amendment to SB 309**

Amend the title of the bill by replacing it with the following:

#### **AN ACT**

establishing a committee to study the issues surrounding AIDS.

Amend the bill by replacing all after the enacting clause with the following:

1 Committee Established. There is established a committee to study the problems associated with AIDS and to list methods of handling AIDS-related problems. The committee shall address each method listed relative to its usage in the prevention of AIDS. The committee shall also focus on an education program which shall be used as a tool for an informed public. The membership of the committee shall be:

I. Two members of the senate, appointed by the senate president.

II. Two members of the house, appointed by the speaker of the house.

III. The director of the division of public health services, or designee.

IV. The director of the office of alcohol and drug abuse prevention.

V. A member of the New Hampshire Medical Society, appointed by such society.

VI. The commissioner of education, or designee.

VII. A secondary school nurse, appointed by the commissioner of education.

VIII. A secondary school teacher, a middle grade school teacher and a lower grade school teacher, appointed by the commissioner of education.

IX. A police officer, appointed by the Police Officers Association.

2 Meetings; Chair. The first meeting of the committee shall be called by the first senator appointed to the committee and shall be held no later than July 15, 1992. The chair of the committee shall be chosen by the members at the first meeting.

3 Report. The committee shall report its findings and recommendations, including any proposed legislation, to the president of the senate, the speaker of the house and the governor on or before November 1, 1992.

4 Effective Date. This act shall take effect upon its passage.

### AMENDED ANALYSIS

This bill establishes a committee to study AIDS related issues.

SENATOR J. KING: As it was noted, the bill started out as prohibiting the distribution of condoms in public schools and colleges and so forth. There was much discussion and it was one of the best attended committee hearings that we have had. The committee, after much deliberation and after getting the message from the people that attended the hearing, that this is probably one way, but there was a lot of other ways, and it should be done through education. As a result, the committee set up an amendment which replaces the whole bill and set up a study committee that will try to identify the areas that should be used for prevention of AIDS and work it into some kind of an education program and to take that kind of approach instead of this approach. Thank you very much.

SENATOR HUMPHREY: On what page is this amendment, may I ask?

SENATOR DUPONT: Fourteen.

SENATOR HUMPHREY: Mr. President, may I get someone to go make some copies of amendments that I would like to offer later?

SENATOR DUPONT: Senator, could we try to have the amendments copied before because it does hold up the session.

Recess.

Out of recess.

SENATOR HUMPHREY: Mr. President, I regret that the police officers left because somebody hijacked my bill. The committee, talk about senatorial courtesy, the committee stripped everything out of the bill except the bill number and substituted in its place a lot of falderal.

SENATOR DUPONT: Would the members please be attentive. Senator Humphrey are you all set or would you like a minute to organize your speech?

SENATOR HUMPHREY: No, I am ready. I was caught off guard, I was on the telephone and I apologize. Mr. President, I would like to before I offer an amendment, I would like to address the bill as it was written. It is a very short bill, maybe 11 lines in total. It says, well the heart of it is only seven lines, it says, "distribution of condoms prohibited." Distribution of condoms to minors prohibited. Condoms shall not be distributed in any manner to minors on state property or any property of its political subdivisions, including all facilities of the public schools, any college in the state university system, and any postsecondary college without the written consent of a parent or the legal guardian of a minor. For the purposes of this section, minor, means anyone 21 years of age or younger. It doesn't say that they can't be distributed anywhere in the state, it doesn't say that they can't be distributed in schools or on public properties. It simply says that it can't be distributed in schools or on public property to minors without parental consent. Now there is a time and a place for everything. I would remind my colleagues in case they haven't noticed, that you can buy condoms in any drugstore. Any kid who is old enough to reach that high can pull them right off of the rack, he doesn't have to ask for them. There are 16 different varieties and colors, and they are there. I don't propose to address that, frankly, I don't have a problem. I do have a problem with public officials subverting the authority and the guidance of parents by handing out condoms to minors behind parents back. This bill is a make them honest bill. Let them get the permission of the parents if they want to pass out condoms to minors on public property. I am going to offer an amendment as soon as it is copied that makes the bill even easier to support. That is, it will be an amendment that will be even easier to support than the original bill, because the language of the amendment will define minor as a person of 18 years or younger; Therefore, the college university system is excluded from this amendment. Let me tell you something, even though I hate to do that, and I will tell you why, you know . . . may we have order, Mr. President?

SENATOR DUPONT: Would the members please take their conversations out to the anti-room and please could I have the door closed?

SENATOR HUMPHREY: It happens that a relative of mine, a very dear relative to whom I married, as a matter of fact, is taking a course at UNH over at the main campus. It happens that her spouse is trying to learn, at least to the fundamental degree, the language

of Russian. So I asked my wife, next time that you are over there would you mind getting me a Russian grammar book, from the University of New Hampshire bookstore, they have a Russian department there, they do offer courses in Russian. Do you know that you can buy condoms at the University of New Hampshire Bookstore, but you can't buy a Russian grammar book, they don't have it. That tells you something about what is wrong with education today in America and what is wrong with the attitudes of our educators who are so damn worried about handing out condoms and making social statements, but they won't pay attention to educating our children. I think that that is an interesting sort of metaphor of where we are in American education today. Well we will let the colleges out. I am going to offer an amendment that applies only, practically speaking, to grammar schools and secondary schools. That concludes my remarks on the bill. Really, I take offense at what the committee did. I was never consulted. I never knew it until the calendar came out late last night, that my bill had been completely gutted and left totally meaningless from the standpoint of the original intent. Now I hope that the members will carefully consider the amendment which will be forthcoming. This is really a cop out and I hope that the Senators will support it.

SENATOR J. KING: Yes, I would like to say a few words because I happen to be the Chairman of that committee. Ironical as it may seem, I think that I was the only one that sort of agreed with him. As a result of trying to get it so that they could get it so that they could study that and other areas, beside that one specific area, we put it into a study committee. At no time did Senator Humphrey provide us with his amendment that he has here today. At no time did he come to our executive board meetings to find out what had happened at the meetings. At no time did he ask me or anyone else on the committee, what is happening to my bill. The consensus of it was it was between inexpedient to legislate and they were talked into putting it into a study committee so we could cover the whole waterfront. That was the story of that.

SENATOR HUMPHREY: Mr. President, we don't have to get huffy about this. Not being one who ever gets huffy. Really, if I were the Chairman of the committee and proposed to strip out the guts from someones bill, I would at least tell them after the fact, and I would try to make a point of telling him before the fact. I just say that, not to pick a fight, but, I want Senators to know that this bill was gutted and I think doing it was not the most forthright way of addressing the matter of whether condoms should be handed out by public officials to minors behind the back of parents.

SENATOR DUPONT: Senator, I would just remind you that it is the authority of the committee, once a bill is heard, to amend in any form, shape or manner that it so desires. It has not been usually the tradition of a committee to consult with a member when it decides that it wants to take and completely amend a bill, unless the Senator does a follow up on the bill while they are working on it. So I don't think that we need to go any further on that, but it is certainly within the power of the committee to do whatever it wanted with the legislation, whether you determine that to be appropriate or not.

SENATOR COLANTUONO: Under general law now, minors are defined as persons under 18. This amendment would set a special class of minors, which would include 18 year olds just for the purpose of this bill. Is that truly the intent of the Senator or would you consider a floor amendment?

SENATOR HUMPHREY: Well a day doesn't matter to me. I don't care whether the Senate says 18 years or younger or it says under 18, it is immaterial. This was drafted today, hurriedly, admittedly, necessarily hurriedly, and that is the way that it came out of the legislative shop. I have no problem if the Senator wants to amend it to define minor in the standard way.

SENATOR COLANTUONO: Would you care to put it on the table?

SENATOR HUMPHREY: Well this is not pending at the moment. We are still on the committee amendment.

SENATOR DUPONT: This is not pending. We are on the committee amendment at the present time. I have not called the vote, so we are still discussing the amendment offered by the committee.

SENATOR MCLANE: As one of the people who would have preferred to have the bill inexpedient rather than to be polite to Senator Humphrey and send it to study, I rise in opposition to the amendment which he is proposing and tell him that he is lucky that he is getting a study. What I would like to say is, that every single organization that came in to appear on this bill, the Medical Society, the Nurses Association, the Epidemiologist and the School Boards, all felt that this question of condoms should be decided at a local school board level. We had some excellent testimony from the Superintendent of School, in New London, I believe. He really educated us as to the need for education and that that is the essence of it, and that this bill is a smoke screen for what really needs to be done. I feel strongly that we should believe those people who are working with young people, who are seeing them everyday, that are running our schools and what they want is what I want, and that is to have local control, and local discussion, and local education about this issue.

Senator W. King moved to have SB 309 an act prohibiting the distribution of condoms to persons 21 years of age or younger on state property or in schools laid on the table.

Adopted.

### LAIID ON THE TABLE

SB 309 an act prohibiting the distribution of condoms to persons 21 years of age or younger on state property or in schools is laid on the table.

**SB 319**, an act separating the AFDC standard of need from the AFDC payment standard. Public Institutions, Health and Human Services committee. Ought to Pass with Amendment. Senator McLane for the committee.

**5010L**

### Amendment to SB 319

Amend the title of the bill by replacing it with the following:

#### AN ACT

separating the AFDC standard of need from the AFDC payment standard, increasing the AFDC standard of need and increasing medicaid eligibility for pregnant women and children.

Amend the bill by replacing all after the enacting clause with the following:

1 Purpose. The purpose of this bill is to separate the standard of need from the payment standard in the aid to families with dependent children program (AFDC) and to raise the standard of need for AFDC to the level that reflects full need as determined by the committee established in 1989, 390:1. Under this bill, the AFDC payment standard and eligibility will remain the same. In addition, this bill increases medicaid eligibility for pregnant women and children.

2 Separation of AFDC Payment and Need Standard. Amend RSA 167:7, II to read as follows:

II. The director of the division of human services of the department of health and human services [may] shall **establish for the aid to families with dependent children consolidated standards of need, or consolidated standards of need except for shelter**, which may be separate from the payment standards and which shall be annually revised to accurately reflect the current cost of basic necessities of living compatible with decency and health as determined by reliable market data. The director may further establish consoli-



dated standards of payment, or consolidated standards of payment except for shelter, **subject to appropriated funds and applicable federal regulations.**

**3 Rulemaking for Payment Standards Added.** Amend RSA 167:3-c, II to read as follows:

**II. Consolidated standards of need [and], standards of need and payment standards under RSA 167:7, I, I-a, and II.**

**4 New Paragraph; Medical Assistance for Pregnant Women, Infants and Children Added.** Amend RSA 167:3-c inserting after paragraph VI the following new paragraph:

**VII. Medical assistance to pregnant women, infants and children under RSA 167:3-d.**

**5 New Section; Medical Assistance Coverage for Pregnant Women, Infants and Children Added.** Amend RSA 167 by inserting after section 3-c the following new section:

**167:3-d Medical Assistance for Pregnant Women, Infants and Children.** The director of the division of human services shall adopt rules under RSA 541-A establishing categorically needy coverage groups under RSA 167:6, VII to provide medical assistance coverage, effective July 1, 1992, to pregnant women, infants and children up to the maximum income eligibility level for which federal financial participation can be received under federal law.

**6 Effective Date.** This act shall take effect 60 days after its passage.

### AMENDED ANALYSIS

This bill requires the director of the division of human services to separate the AFDC standard of need from the AFDC payment. In addition it requires the AFDC standard of need to be raised annually to reflect the cost of living increases for basic necessities. The AFDC payment standard and the AFDC eligibility will remain the same and medicaid eligibility for pregnant women and children will be increased.

SENATOR MCLANE: Thank you. This was a two-year study done by a committee. I was not a member of that committee, but there were four Senators that were appointed to the committee. They met for a long time and have come out with a very thick report about AFDC. The thrust of this bill is that if the standard of need and the standard of payment are at two different levels, it would not cost anymore for AFDC payments because the standard of payment would still be at the same level. It would allow the state to match money with the federal government for pregnant women and infants up to the level that all of the other New England states match. This

bill, I would assume, would go down to Finance where they would look at the financial impact. I guess the only thing that I have to say is that money spent on prenatal care and care for infants of the welfare average level, is money well spent. The statistic is that for every dollar that you spend on prenatal care, you get back \$5.63 in the first year. I would urge you to send this forward. It is not raising the standard of payment in anyway, but it allows the standard to be higher so that more women and infants, only women and infants would be covered by medicaid.

SENATOR COLANTUONO: Do I also understand that one of the other things that this bill does is extend AFDC benefits to women who are pregnant, but who have not yet given birth?

SENATOR MCLANE: Yes. It is prenatal care. Presently, if you are an impoverished woman, under the level, and you are pregnant, you can receive medicaid coverage even though you are not eligible for AFDC because you don't have a child. That was a bill that we passed in the last session. That is where the statistic comes from, that for every dollar spent you get \$5.63 back.

SENATOR COLANTUONO: Are we now saying that they are eligible for that cash monthly assistance under aid to families for dependent children?

SENATOR MCLANE: No. We are just saying that they can be covered. That if they are eligible for aid to families of dependent children, they can be covered for medicaid. It is just extending the medicaid coverage.

Committee amendment adopted.

Referred to Finance (Rule #24).

Senator Roberge in opposition to SB 319.

**SB 324**, an act establishing a commission on the family. Public Institutions, Health and Human Services committee. Ought to Pass with Amendment. Senator J. King for the committee.

**5012L**

### **Amendment to SB 324**

Amend the title of the bill by replacing it with the following:

#### **AN ACT**

establishing a commission on the family and permitting Jewish  
Rabbis who are not citizens of the United  
States to solemnize marriages.

Amend RSA 19-E as inserted by section 1 of the bill by inserting after RSA 19-E:10 the following new section:

19-E:11 Legislative Review. The general court shall review the state commission on the status of the family every 5 years to determine the effectiveness of the commission and whether this chapter should be repealed.

Amend the bill by inserting after section 2 the following and re-numbering section 3 to read as 4.

3 Marriages; Rabbi's Authority to Perform. Amend RSA 457:37 to read as follows:

457:37 Exceptions. Nothing contained in this chapter shall affect the right of Jewish Rabbis [who are citizens of the United States,] residing in this state, or of the people called Friends or Quakers, to solemnize marriages in the way usually practiced among them, and all marriages so solemnized shall be valid. Jewish Rabbis [who are citizens of the United States,] residing out of the state, may obtain a special license as provided by RSA 457:32.

### AMENDED ANALYSIS

This bill establishes a commission on the family.

This bill also permits Jewish Rabbis residing in this state who are not citizens of the United States to solemnize marriages.

SENATOR J. KING: SB 324 sets up a family commission at the state level. The set up will be 15 members appointed by the Governor and Council. It will be supported by gifts or any other money, but no state money involved. A fund will be set up just for this family commission alone as a result of those donations. The duties would be to study the impact of the laws that we have now and to introduce new laws that would be helpful to the family and all along that area. That basically is the original bill. This one also has been amended. One of the amendments is that after five years, it would be sunsetted if it didn't live up to what the expectations were at the review if they thought that it wasn't worth the while of keeping it going. The second amendment that we put on this bill is a request from someone in the House. I think that it was a good place to put it because it has to do with marriages. On the statute at the present time, there is a law that the Rabbi's and the Quakers cannot perform a marriage if they are from out of the state. So we put an amendment in here that deleted that section. So it doesn't make any difference if you are from the country and you are a Rabbi or you are from another state, you can still get a license and do the job as any other clergy member can. They were the only ones specified that couldn't do it, so that is the other change.

Committee amendment adopted.

Ordered to third reading.

**SB 327**, an act establishing a committee to study the effects of substance abuse on health care costs of the state. Public Institutions, Health and Human Services committee. Ought to Pass with Amendment. Senator J. King for the committee.

**4955L**

### **Amendment to SB 327**

Amend section 1 of the bill by inserting after paragraph VIII the following new paragraphs:

IX. The commissioner of labor, or designee.

X. The commissioner of education, or designee.

XI. A member representing a health maintenance organization, appointed by the insurance commissioner.

**SENATOR J. KING:** This bill here sets up a committee to study the effects of alcohol and drug abuse on those state agencies and people who are effected by it, and it costs the state money in the long run. This has to do with prenatal care, with the workplace and cover the whole gamut. What is the effect of substance abuse on the economy and the state itself. The amendment added to this one, just adds three new members to the committee. The Department of Labor, the Commission of Education and a member of HMO's. The committee felt very strongly about this. It is about time that we find out just what is the actual cost of substance abuse in the state of New Hampshire. I move it ought to pass with amendment.

Committee amendment adopted.

Ordered to third reading.

Senator Blaisdell (Rule #42).

**SB 436-FN-LOCAL**, an act relative to aid to the permanently and totally disabled. Public Institutions, Health and Human Services committee. Ought to Pass with Amendment. Senator McLane for the committee.

**5031L**

### **Amendment to SB 436-FN-LOCAL**

Amend the title of the bill by replacing it with the following:

**AN ACT**

relative to aid to the permanently and totally disabled  
and the property tax exemption for the blind.

Amend the bill by replacing all after the enacting clause with the following:

1 Retention of Aid Until Final Determination is Made. Amend RSA 167:6, VI to read as follows:

VI.(a) For the purposes hereof, a person shall be eligible for aid to the permanently and totally disabled who is between the ages of 18 and 64 years of age inclusive; is a resident of the state; and is permanently and totally disabled **as determined by the division of human services, department of health and human services**. No person shall be eligible to receive such aid while receiving old age assistance, aid to the needy blind, or aid to families with dependent children.

**(b) A person meeting the requirements of subparagraph VI(a) shall be eligible to receive state supplemental payments under the aid to the permanently and totally disabled program regardless of any determination made by the Social Security Administration as to that person's eligibility for disability benefits under the Social Security Act.**

2 Exemption for the Blind. Amend RSA 72:37 to read as follows:

72:37 Exemption for the Blind. Every inhabitant who is legally blind as determined by the blind services department of the vocational rehabilitation division of the education department shall be exempt each year on the assessed value, for property tax purposes, of his or her residential real estate to the value of \$15,000, **and a city or town may exempt up to \$35,000 to address significant increases in property values**. The term "residential real estate" as used in this section shall mean the same as defined in RSA 72:29. All applications made under this section shall be subject to the provisions of RSA 72:33 and RSA 72:34.

3 Effective Date. This act shall take effect 60 days after its passage.

### AMENDED ANALYSIS

This bill allows persons to retain the aid they receive from aid to the permanently and totally disabled if they meet certain requirements regardless of Social Security eligibility.

This bill also authorizes cities and towns to raise the tax exemption for legally blind persons to \$35,000 to address significant increases in property values.

SENATOR MCLANE: This bill was put in by Senator Hollingworth as a result of meetings that they had with the Rules committee in which she discovered that if people on APTD applied for social security (SSI), and they were refused, that they had to pay back the money. Why don't you do it, Senator Hollingworth.

SENATOR HOLLINGWORTH: Thank you, Susan, I would be glad to. This is kind of complicated because in 1953, the federal government came into the state of New Hampshire and had a system that was called SSI in which they determined whether you could get assistance or if you were dependent. What they said to the state of New Hampshire was, "you can have your own program as long as it is tougher or you can have ours". The state opted to have the tougher one and we said totally and permanently disabled. So the standard that you have to meet in New Hampshire is that you are not disabled for one year, but you are totally and permanently disabled. That is determined by a doctor over at Public Health here in Concord. But the federal government said, when you are declared totally and permanently disabled, or SSI, you get a medicare card for your health benefits. In New Hampshire, with our own revenues, we gave them assistance. That is housing, clothing and/or food. Because not only do they have to be totally and permanently disabled, but they have to be poor. They have to have less than \$1,500 assets, total assets. The maximum that they can get, if they are poor and totally disabled is \$400 cash benefits a month. Now they have to live on that the full time. If they live with someone else, they also deduct that. If they get a small income from any kind of pension or any kind of inheritance or anything, that is deducted and then it stops if it is more than \$1,500. So what happened is that this bill came before Rules and someone in Washington said "if we deny you SSI, you take away the medicare card." Well what happened here in New Hampshire at the other side, somebody got confused and decided, we are not only going to take away your medicare card, but we are also going to take away your cash benefits. So here we have these people who have no money and no medicare card and they are out there now because this started in December, and this came through Rules in November. So now you have got 40 people who if they are denied SSI, and the amazing part of it is that 80 percent of the people who are denied SSI, receive it the second time around, because it is such a very difficult form to fill out that they have to get assistance; and when they give them assistance to fill it out, they say "oops, we goofed, you should definitely be getting your medicare card." But it takes nine months in between, so these people are sitting there and they have one place to go, the State Hospital, because 60 percent of them are mentally ill. That is at \$40,000, or to your towns and your cities and your counties. The bill had the total support of the Communities, Municipal Government and County Government. It is not a new expenditure. This was in the budget last year and we funded it. It has been an on going program since 1953, but what happened because the agency listened to somebody in Washington saying "take away their card," they presumed that they should take away

their cash benefits too. It really is an injustice, and it should have never gone through Rules. This is a policy statement that if you decide that you don't want to take care of these people, do it here. But certainly, we don't want to throw these people out on the street.

Committee amendment adopted.

SENATOR J. KING: I just wondered if there is another amendment being offered?

SENATOR MCLANE: Okay, that is in there.

SENATOR J. KING: I just want to make sure that everyone knows what is in the bill.

SENATOR MCLANE: Okay.

SENATOR J. KING: May I explain what it is, Mr. President?

SENATOR DUPONT: Is there a floor amendment that is going to be offered?

SENATOR J. KING: No. It is in the bill, but I want to make sure that the people know that there is one in there. At the present time the locals allow for taxes exempted for the completely disabled blind up to \$15,000. This leaves the \$15,000 where it is and it says that the locals have the option to go up to \$35,000 because of the increase in value if they want too. Thank you very much.

SENATOR DUPONT: Thank you, Senator, and it is under section 2 in the amendment in the calendar.

Referred to Finance (Rule #24).

**SB 453-FN**, an act relative to involuntary commitment procedures. Public Institutions, Health and Human Services committee. Ought to Pass with Amendment. Senator McLane for the committee.

**5015L**

### **Amendment to SB 453-FN**

Amend the bill by replacing all after the enacting clause with the following:

1 Mental Health Services System; Access to Information. Amend RSA 135-C:19-a to read as follows:

135-C:19-a Disclosure of Certain Information.

I. Notwithstanding RSA 329:26 and RSA 330-A:19, a community mental health center or state facility providing services to seriously or chronically mentally ill clients may disclose information regarding diagnosis, admission to or discharge from a treatment facility, functional assessment, the name of the medicine prescribed, the side effects of any medication prescribed, behavioral or physical

manifestations which would result from failure of the client to take such prescribed medication, treatment plans and goals and behavioral management strategies to a family member or other person, if such family member or person lives with the client and provides direct care to the client. The mental health center or facility shall provide a written notice to the client which shall include the name of the person requesting the information, the specific information requested and the reason for the request. Prior to the disclosure, the mental health center or facility shall request in writing the consent of the client. If consent cannot be obtained, the client shall be informed of the reason for the intended disclosure, the specific information to be released and the person or persons to whom the disclosure is to be made.

**II. Notwithstanding RSA 329:26 and RSA 330-A:19, a designated receiving facility may notify any family member or other person who the receiving facility reasonably believes resides with or provides direct care to a person admitted to the facility pursuant to RSA 135-C:27-54 or RSA 135:17-b of the person's admission to or discharge from the facility when the facility determines that such notification is essential to the care or treatment of the person admitted. Prior to such notification the facility shall in writing request the person's consent for such notification. If the consent cannot be obtained, the facility shall inform the person in writing of the persons notified pursuant to this section. The facility and/or its employees or agents shall be immune from any civil liability for a decision made in good faith to not contact a family member pursuant to this section. A notification made pursuant to this section shall not be introduced as evidence in any legal proceeding in which the person admitted is a party.**

**III. Notwithstanding RSA 329:26 and RSA 330-A:19, when the medical director or designee determines that obtaining information is essential to the care or treatment of a person admitted pursuant to RSA 135-C:27-54 or RSA 135:17-b, a designated receiving facility may request, and any health care provider which previously provided services to any person involuntarily admitted to the facility, may provide information limited to medications prescribed, known medication allergies or other information essential to the medical or psychiatric care of the person admitted. Prior to requesting such information the facility shall in writing request the person's consent for such request for information. If the consent cannot be obtained the facility shall inform the person in writing of the care providers who have been requested to provide information to the facility pursuant to this section. The facility may disclose such information as is necessary to identify the person and the facility which is requesting the information.**



**No care provider who discloses otherwise confidential information to a designated receiving facility following a request made pursuant to this section shall be held civilly or criminally liable for disclosing such information.**

2 Involuntary Admission; Determination of Probable Cause. Amend RSA 135-C:31, I to read as follows:

I. Within 3 days after an involuntary emergency admission, not including Sundays and holidays, and subject to the notice requirements of RSA 135-C:24, there shall be a probable cause hearing in the district court having jurisdiction to determine if there [is] **was** probable cause for involuntary emergency admission **at the time the admission occurred**. The burden shall be on the petitioner to show that probable cause [exists] **existed**. The court shall render its written decision as soon as possible after the close of the hearing, but not later than the end of the court's next regular business day.

3 New Paragraph; Request for Appointment of Guardian. Amend RSA 135-C:36 by inserting after paragraph II the following new paragraph:

III. The petition for admission on an involuntary basis may include a request for appointment of a guardian over the person for the limited purpose of providing for the respondent's health care. If such a request is made, the petition shall include:

(a) The petitioner's connection with or relationship to the respondent;

(b) When appropriate, the name and address of the person or institution having care or custody over the respondent;

(c) The names and addresses of adult spouses, parents, children and siblings of the respondent, so far as they are known to the petitioner;

(d) The name, address, occupation and relationship to the respondent, if any, of the proposed guardian; and

(e) A statement containing facts which show the necessity for appointment of a guardian of the person for the purpose of providing health care, including specific allegations as to the respondent's personal actions or actual occurrences which are claimed to demonstrate his or her inability to provide for personal needs for health care.

4 Examination by Psychiatrist; Admission Determination. Amend RSA 135-C:40, II to read as follows:

II. Whether, in the opinion of the examining psychiatrist, involuntary admission is necessary for treatment of the person, **and if so, the appropriate period of time, in the opinion of the examining psychiatrist, for such an admission. In determining the appropriate period of time, the examining psychiatrist shall include, to the extent that he considers it appropriate, time to**

**allow for conditional discharge. Conditional discharge shall be appropriate when the person has recovered from his mental illness to such an extent that he no longer requires in-patient treatment but a prescribed regimen of medical, psychiatric, or psychological care or treatment is necessary to prevent the recurrence of the circumstances which led to the person's dangerous condition.**

5 Orders of Court; Admission. Amend RSA 135-C:45 to read as follows:

135-C:45 Order of Court.

**I.** In hearings held under this chapter, after hearing all the evidence, the court may order the respondent to be released, notwithstanding expert testimony, or it may order the person to submit to some form of treatment other than in-patient treatment on an involuntary basis, which may include treatment at a community mental health program approved by the director. If the examining psychiatrist recommends involuntary admission to a receiving facility as the most desirable form of treatment, the court may so order. If the court determines that involuntary admission to a receiving facility is necessary, but the examining psychiatrist finds otherwise in his report under RSA 135-C:40, the court may overrule the recommendation of the psychiatrist only after the court finds that treatment other than involuntary admission to a receiving facility would not be in the best interests of the person and the community.

**II.** In any order of admission to a receiving facility, the court shall include in the duration of said order an appropriate period of time, if any, to allow for conditional discharge. Admission for purposes of conditional discharge shall be appropriate when the person has recovered from his mental illness to such an extent that he no longer requires in-patient treatment but a prescribed regimen of medical, psychiatric, or psychological care or treatment is necessary to prevent the recurrence of the circumstances which led to the person's dangerous condition.

**III.** If the respondent is on a conditional discharge at the time of the hearing, the court may order involuntary admission to a receiving facility, or renew such an order, for the purpose of permitting the respondent to remain on conditional discharge if such treatment is necessary to prevent the recurrence of the circumstances which led to the person's dangerous condition.

6 New Section; Appointment of Limited Guardian. Amend RSA 135-C by inserting after section 45 the following new section:

135-C:45-a Appointment of Limited Guardian.

**I.** In any case in which the petition includes a request for appointment of a guardian, the court shall also determine whether to appoint a guardian over the person for the purpose of providing

health care. There shall be a legal presumption of capacity, and the burden of proof shall be on the petitioner to prove beyond a reasonable doubt that the respondent is incapacitated and in need of a guardian.

II. At the hearing, the court shall:

(a) Inquire into the nature and extent of the functional limitations of the respondent; and

(b) Ascertain his or her capacity to care for himself or herself with respect to his or her health care.

III. If it is determined that the respondent possesses the capacity to care for himself or herself regarding health care, then the court shall deny the request for appointment of a guardian.

IV. Alternatively, the court may appoint a guardian of the person with respect to health care as requested in the petition and confer specific powers of guardianship on the proposed guardian after finding in the record based on evidence beyond a reasonable doubt that:

(a) The person for whom a guardian is to be appointed is incapacitated; and

(b) The guardianship is necessary as a means of providing appropriate health care for the incapacitated person; and

(c) There are no available alternative resources which are suitable with respect to the incapacitated person's welfare, safety, and rehabilitation; and

(d) The guardianship is appropriate as the least restrictive form of intervention consistent with the preservation of the civil rights and liberties of the respondent.

V. If a guardian is appointed, letters of guardianship shall be issued, as provided in RSA 464-A:11.

VI. Except as modified by order of the court, a guardian appointed under this chapter shall have the powers and duties set forth in RSA 464-A:25, I(c).

VII. The provisions of RSA 464-A:10 shall govern who may be a guardian.

VIII. Upon appointment, the guardian shall give bond to the court as provided in RSA 464-A:21.

IX. Compensation to the guardian shall be allowed as provided in RSA 464-A:23.

X. The provisions of RSA 464-A:24 shall govern the appointment of agents by guardians.

XI. The guardian shall file biennial reports as provided in RSA 464-A:35, give annual notice to the ward as provided in RSA 464-A:38, file a final accounting report as provided in RSA 464-A:40, and be subject to the provisions and sanctions of RSA 464-A:37 for failure to make or file any report within the time provided by law.

XII. The provisions of RSA 464-A:39 shall govern the removal or resignation of the guardian.

XIII. The guardian may at any time file a petition pursuant to RSA 464-A:4 for a finding of incapacity and expansion of his or her authority over the person or estate of the ward. Such a proceeding shall be governed by the provisions of RSA 464-A.

7 Amended Orders; Show Cause Added. Amend RSA 135-C:47 to read as follows:

135-C:47 Amended Orders.

I. The court issuing an order for treatment, other than in-patient treatment at a receiving facility, shall retain jurisdiction of the case for the duration of the order. At any time during the period of such order, any person may petition the probate court having jurisdiction for a hearing on whether the order should be amended or the person should be involuntarily admitted to a receiving facility.

II. The court issuing an order for inpatient treatment at a receiving facility may retain jurisdiction of the case for the duration of the order. The court may include in its order a provision requiring the petitioner or the receiving facility to show cause upon a date set by the court as to why the person has not been granted a conditional discharge under RSA 135-C:50.

(a) At such a proceeding, the burden shall be upon the petitioner or the receiving facility to demonstrate by a preponderance of the evidence that either:

(1) The person has been offered a conditional discharge, the conditions of the discharge were reasonable and appropriate, and the person has not consented to those conditions; or

(2) The person requires further inpatient treatment at the receiving facility.

(b) After hearing all the evidence, the court may order the respondent to be released, or to submit to continued inpatient treatment on an involuntary basis. The court may set a new date upon which the petitioner or receiving facility shall show cause as to why the person has not been granted a conditional discharge under RSA 135-C:50. No order made pursuant to this paragraph shall be valid for longer than the period of time remaining on the original order of involuntary admission.

(c) At any show cause hearing held under this paragraph, the respondent shall have the right to legal counsel, to present evidence on his own behalf, to have a closed hearing unless he requests otherwise, and to cross-examine witnesses. A transcript, which may consist only of any audio recording of the proceedings, shall be made of the entire proceeding.

8 Appeal; Date of Hearing. Amend RSA 135-C:52 to read as follows:

135-C:52 Review by Director; Appeal; Rules. A person whose conditional discharge is revoked, pursuant to RSA 135-C:51, IV, may appeal the decision to the director. The person shall be entitled to a hearing on the appeal, before the director or his designee, within 5 days, excluding weekends and holidays, of [admission to the receiving facility] **the director's receipt of request for the hearing** in accordance with rules adopted by the director pursuant to RSA 541-A. Such rules shall include provision for legal counsel and for waiver of the hearing.

9 New Subparagraph; Assistance of Law Enforcement Officer Added. Amend RSA 464-A:25, I by inserting after subparagraph (d) the following new subparagraphs:

(e) Upon a finding that ensuring treatment compliance is in the best interest of a ward, the probate court may authorize a guardian of the person, appointed pursuant to RSA 464-A, to request the assistance of any law enforcement officer to restrain or transport, or both, his ward to receive appropriate treatment. Any law enforcement officer who, in the scope of his employment, provides such assistance, which is not wanton or reckless, in conformity with an order of the probate court shall be immune from any civil or criminal liability for such action.

(f) A guardian may authorize a health care provider to restrain or forcibly administer treatment to his ward, or both, subject to any limitations imposed by the court.

10 Foreign Guardians; Full Faith and Credit. Amend RSA 464-A:44 to read as follows:

464-A:44 Foreign Guardianships and Conservatorships.

I. Any person who has been appointed guardian or conservator for any person by a court of competent jurisdiction in any other state shall, upon petition and filing of a certified copy of that appointment with the court, be appointed guardian or conservator of the estate of the ward situated in this state without further notice or hearing. Upon such appointment, the foreign guardian or conservator may deal with the estate of the ward in the same manner as a resident guardian or conservator and in accordance with RSA 464-A:27. The foreign guardian or conservator shall account to the court of his original appointment for the proceeds from the sale of any of the ward's estate situated in this state. A certified copy of the approved account shall be filed with the court in this state prior to discharge of the guardian or conservator. The court, as a condition of appointment, may require the guardian or conservator to post an adequate surety bond to insure the faithful performance of his duties.

**II. Any person who has been appointed guardian of the person for a person who is temporarily in this state by a court of competent jurisdiction in any other state shall be accorded the powers of guardianship as reflected in the order appointing the guardian, with full faith and credit.**

**III. Any person who has been appointed guardian of the person for a person who is a resident in this state by a court of competent jurisdiction in any other state shall be accorded the powers of guardianship as reflected in the order appointing the guardian, with full faith and credit, for 60 days following the date of the ward's residence in this state or until an order is issued on a petition for guardianship filed within 60 days of the date of the ward's residence in this state.**

11 Effective Date. This act shall take effect January 1, 1993.

SENATOR MCLANE: This bill is also the result of a study committee of House and Senate members, and mental health professionals, and AMI, which is the Alliance for the Mentally Ill. It has the approval of those groups. It in general, allows some court procedures to act more quickly, allowing guardians to be appointed more quickly and it makes clear that treatment of any mental hospital can also include being discharged under a temporary discharge. The hearing on an involuntary emergency admission is clearly determined to be the person at the time of admission. Apparently, what was happening was, that people were being committed and receiving medication and then going out for the hearing and they appeared to be perfectly alright. And they wanted to be sure that the involuntary emergency admission was at the time that they admitted. It also, and this is the controversial part of it, allows for greater information flow between New Hampshire Hospital, and family members and care providers of persons admitted. This is a sharing of information on medications that obviously, the families want and, obviously, the patients want when they are feeling normal. But that is the place that there was some controversy about this bill. It also provides assistance to guardians in carrying out their responsibilities, where in ward is non cooperative. This is instances when people have a guardian and they are discharged from the hospital and they refuse to take their medications and perhaps they do some drinking and the guardian sort of has to wait out the period before they can put them back into the hospital. So it does give a little less power to these severely mentally ill. But I think the conclusion of the families and of the medical professionals that worked on this committee is that it is a necessary bill and it is the result of their study committee.

Committee amendment adopted.

Ordered to third reading.

**SB 471-FN**, an act authorizing child day care to certain AFDC clients. Public Institutions, Health and Human Services committee. Ought to Pass with Amendment. Senator Bass for the committee.

**5030L**

**Amendment to SB 471-FN**

Amend the bill by replacing all after the enacting clause with the following:

1 New Paragraph; Child Day Care Service Eligibility. Amend RSA 167:7 by inserting after paragraph V the following new paragraph:

VI. Persons who are aid to families with dependent children financial assistance recipients and are participating in an associate's degree or bachelor's degree training program or course of study shall be eligible for up to 2 years of child day care service payments, provided that the program or course of study is necessary to meet individual goals that are directly related to obtaining useful employment in a recognized occupation, and further provided that such child day care service payments shall be subject to the requirements of federal law.

2 Effective Date. This act shall take effect July 1, 1992.

SENATOR BASS: Mr. President, SB 471 as amended essentially allows the recipients of AFDC to receive assistance of any two years of college education. Under the current law they are only entitled to the last two years instead of the first two. Unfortunately, what that leads to is a situation in which women generally cannot afford to go to four-year colleges because they don't get any AFDC during the first two years. So what the bill does is allow any two years, or up to two years of AFDC for individuals going to college. This will permit recipients to complete the first two years and then if necessary finish up the last two. The committee urges your adoption of the amendment and the committee report of ought to pass as amended.

SENATOR SHAHEEN: Senator Bass, I know that you said that it would be for two years of college, but I assume that you meant to say for two years of daycare for recipients going back to college?

SENATOR BASS: Absolutely. This bill is not paying for anybody's education. It allows for daycare while the recipient is in college.

SENATOR SHAHEEN: I am correct in assuming that the money that comes in for the child daycare payments is federal money?

SENATOR BASS: Now that you mention it, that is absolutely correct.

SENATOR SHAHEEN: Thank you.

SENATOR BASS: As Senator Shaheen well knows this is an area that is a particular speciality for me.

Committee amendment adopted.

Ordered to third reading.

**SB 405-FN**, an act relative to driver attitude training for repeat and habitual offenders. Transportation committee. Ought to Pass. Senator Cohen for the committee.

SENATOR COHEN: Mr. President. As Senate members recall there was some discussion on this a week or so ago and hopefully, I can answer the questions that were raised. The purpose of this bill is to require habitual and serious traffic violators who have their licenses suspended to complete an approved driver attitude improvement program before getting their licenses back. The Department of Safety estimates that this will affect approximately 3,000 New Hampshire drivers. It will not increase state expenditures. The cost will be the responsibility of the client. The anticipated range of cost is about \$50 to \$80. There was a question about indigents who couldn't afford the \$50 to \$80 and this bill provides for indigents to pay at a reduced fee, which will be 10 percent of their average weekly gross income, the provider picks up the rest of the expenses for that. Studies show that driver improvement courses do lead to fewer accidents and safer driving. Also once the courses are approved they will be available through multiple vendors making sure that no one program can monopolize the state. I urge the full support of this bill.

SENATOR DISNARD: Senator Cohen, I noticed the reduced fee shall be set at 10 percent of the clients average household income, weekly income.

SENATOR COHEN: Yes.

SENATOR DISNARD: What happens if my wife and I are separated? What happens if a man and his wife are separated?

SENATOR COHEN: Well then your household income is your income.

SENATOR DISNARD: They are both legally married.

SENATOR COHEN: As I would understand it, household income would seem to me to be just that.

SENATOR NELSON: Mr. President, I want to thank you for this opportunity to ask my colleague from Portsmouth about this driver attitude training. I see now that the government is involved in attitudes. I am trying to ascertain what is an attitude program and how do you get, or what attitude gets you into an attitude program?



SENATOR COHEN: This bill seeks to address the problem of habitual offenders who thus far have proven that programs have not been entirely successful and it seems apparent that attitude is part of the problem. How one exactly and specifically describes attitude, I am not sure. But clearly there is a problem here that is not being gotten to. It puts at risk the rest of the people of New Hampshire.

SENATOR NELSON: Senator Cohen, perhaps I didn't hear you way across the crowded room like this, but I am trying to get at attitude program. What is an attitude program? What is an attitude program, is what I am trying to understand. Did they give you any information about an attitude program? I am trying to find out what kind of an attitude you have to have to get into the attitude program right now?

SENATOR BLAISDELL: With the kind of attitude that you have right now . . .

SENATOR DUPONT: Senator Blaisdell, you are out of order.

SENATOR BLAISDELL: I know. I have been out of order all day.

SENATOR COHEN: Well clearly there is a behavior problem here with these people and this will, hopefully, serve to modify the behavior of these habitual offenders.

SENATOR NELSON: Do you think that it is the governments business to be dealing in behavior and attitude?

SENATOR COHEN: I think that it is the governments business to protect the people of the state of New Hampshire.

SENATOR NELSON: I didn't state my question clearly. My question was not protection and safety of the people of the state of New Hampshire, which I obviously support. I am asking you about defining attitude, should the government of the state of New Hampshire be involved in defining attitudes and having attitude programs and behavior programs?

SENATOR COHEN: I would say that by the continued behavior of the repeat offender is demonstrating that there is an attitude problem and there is the definition there.

SENATOR COLANTUONO: First of all, this bill says that you have to demonstrate proof of successful completion of a driver attitude program. So what is the proof going to be that you have a new attitude now?

SENATOR COHEN: I would defer to Senator Roberge on that.

SENATOR ROBERGE: This program has to do with people who repeat the same offense multiple times. They go to a program where a number of them get together and they discuss why they do what

they do. Someone will be maybe a habitual running lights, somebody might be a habitual speeder. They get together and like I would say to you, why do you speed so much? You would say, well why do you run stop lights, and I will say well I think speeding is crazy, it kills people. You come back and say, well running stop lights kills people too, what is the difference? Alright? But the thing is, why send these people back or give their license back to them without trying to change the reason why they are habitual? You have to change the minds or at least attempt to change the mind set before you put these people back on the road or what have you accomplished? You want to just give them back their license and you know they are going to continue to run stop lights and continue to speed and do a whole lot of other things. This is what this is all about. I have an amendment that deals with . . . by the way this is an aid all program, it cost between \$50 and \$80. Senator Hollingworth had concerns about people who could not afford to pay, so we have an amendment here where if you are on federal assistance and you can prove it, for government assistance, then you will have to pay only 10 percent of the fee and the rest will be picked up by the provider. I think that not only is the program very beneficial to these people, and we had testimony in the committee where a young man had taken the course and he felt very strongly about it and I think that this is very important. I would submit this amendment to deal with the concerns of those who had a question about those who did not have ability to pay. But as far as the education goes, I think it is going to be very beneficial and I think that we should pass this piece of legislation. It will make our roads safer and I think that is what we are talking about, making our roads in New Hampshire safer for everyone.

SENATOR DUPONT: Senator, that was a good speech.

SENATOR COLANTUONO: I have the same question because I am still trying to find out how do you determine that they successfully completed. What is the proof that they successfully complete the program?

SENATOR ROBERGE: Well they put in their eight hours. It usually is given on a weekend, eight hours altogether on a weekend. That is the completion of the program. If their mind hasn't changed in the eight hours, I mean you can't . . . you know . . . but you can do the best that you can to try to educate these people, that their behavior is unacceptable and that they can change it.

SENATOR COLANTUONO: Okay, we are having some fun on this but it is an important point. If you just simply have to sit there for eight hours and then get back into your car and continue to speed

back home so that you can get back home to get to your refrigerator so that you can pull out your beer . . .

SENATOR ROBERGE: Well, I think that you can be negative about anything, Senator. Nobody can ever get blood out of a stone. You can only do your best to help people in order to change their attitude. But not to make the attempt to try and change these people's unacceptable behavior, like for instance, just to fine them and take away their license, fine. You have fined them, you have taken away their license, and you have punished them. What have you done to change their mind about what they do? Nothing. You have done nothing. So for sure you are going to get that person back out on the road probably making the same dumb mistakes. Why not at least try and make an attempt to try and change their mind?

SENATOR COLANTUONO: Senator Cohen, I think that you can answer this, because you said in your speech that either the bill or the amendment, I forget which, would solve the problem of there only being one vendor, now we are going to have more than one vendor and that is part A. Part B was Senator Oleson last time had a concern about the north country, and I think Senator Disnard too. Are people from Berlin going to have to drive to Nashua or Concord to go to this program? Can you answer those two questions? Where are those two concerns addressed in the bill or the amendment?

SENATOR COHEN: I will defer to Senator Roberge.

SENATOR ROBERGE: What we are going to do. There are going to be multiple providers.

SENATOR COLANTUONO: Where does this say this in the bill or the amendment, that is what I am looking for?

Recess.

Out of recess.

SENATOR ROBERGE: The Commissioner of Safety is going to have rulemaking authority and anyone who meets the criteria is going to be able to give this program, and they will be given throughout several areas of the state and I would remind the Senator that it is a one, eight hour program that will be given on the weekend and I think that people will have ample opportunity to avail themselves of getting there for one day, hopefully in their lives.

SENATOR ROBERGE: Amendment #5051L. Mr. President, I have addressed the amendment. It has to do with those who cannot afford the program and the mechanism that will help them to avail themselves to this program in a very fair and equitable way.

Senator Roberge offered a floor amendment.

5051L

**Amendment to SB 405-FN**

Amend the bill by replacing all after section 2 with the following:

3 Reduced Fee. If the client cannot pay the full fee for the driver attitude program as required under section 1 of this act, the client shall contact the program vendor and make arrangements to apply for a reduced fee prior to admission to the program as follows:

I. If the client's gross annual income, including that of his or her spouse, is at or below the current federally established poverty level, as indicated in the most recent federal register published by the Office of the Federal Register, National Archives and Records Administration, a reduced fee shall be available for the client.

II. The reduced fee shall be set at 10 percent of the client's average household weekly income.

III. Documentation of income shall be submitted to the program vendor prior to admission.

IV. Acceptable documentation shall include, but not be limited to:

(a) The 4 most recent pay stubs; or

(b) A letter of verification for receipt of financial aid, such as aid to families with dependent children or unemployment benefits.

4 Effective Date. This act shall take effect January 1, 1993.

**AMENDED ANALYSIS**

This bill allows the director of motor vehicles to prohibit the restoration of a person's license or driving privilege after suspension or revocation until the person has demonstrated proof of successful completion of a driver attitude program.

This bill authorizes the driver attitude program vendor to assess a reduced fee to program participants upon a showing of certain eligibility criteria.

Floor amendment adopted.

Ordered to third reading.

**HB 379-FN**, an act relative to advertising devices within highway rights-of-way. Transportation committee. Ought to Pass. Senator Cohen for the committee.

SENATOR COHEN: I hope that this one will be easier. This permits advertising devices located within right-of-ways that were there as of January 1, 1991. Right now they are prohibited. But as we heard testimony in the committee, there are a number of signs that would be prohibited under current law that have been there for many, many years. This would be a significant hardship for the peo-

ple who own the signs to have to remove them. No further signs would be allowed to be constructed within this region. There was no opposition to this bill, and I urge passage of it, thank you.

Adopted.

Ordered to third reading.

**SB 379-FN**, an act changing the eligible age for free use of recreation areas from 65 to 70 and extending this privilege to all qualifying individuals. Wildlife and Recreation committee. Ought to Pass with Amendment. Senator W. King for the committee.

**5080L**

**Amendment to SB 379-FN**

Amend the title of the bill by replacing it with the following:

**AN ACT**

establishing discounted rates and fees  
for state-owned ski areas.

Amend the bill by replacing all after the enacting clause with the following:

1 New Paragraph; Discounted Fees. Amend RSA 218:5-b to read as follows:

218:5-b Discounts; Division of Parks and Recreation.

**I.** The director of the division of parks and recreation is hereby instructed to issue day use coupon books reflecting a 20 percent discount from the usual rates charged at state parks during the summer months.

**II.** The director shall establish discounted rates and fees for admission of any person at least 65 but less than 70 years of age to any state-owned ski area. Any person who has attained the age of 70 shall be admitted without charge.

2 Ski Areas Deleted. Amend RSA 218:5-c to read as follows:

218:5-c Admission Without Charge. Any person [who is a resident of this state and] who has attained the age of 65 shall, upon proper identification, be admitted to any state recreation area, including but not limited to parks, historical sites[,] **and** beaches [and ski areas,] without charge. Persons qualifying under this section shall be allowed to use any state-owned facility within the recreation area [without charge for the use of the facility, except persons qualifying under this section shall be charged the usual fee for the use of so-called "uphill devices" on Saturdays and Sundays]. Provided further that other special charges at state-owned recreation areas, such as fees charged for parking at parking meters, shall be charged per-

sons qualifying under this section at the usual rates. The provisions of this section shall not apply to state-owned campsites [or], camping areas, **or ski areas.**

3 Effective Date. This act shall take effect 60 days after its passage.

### AMENDED ANALYSIS

This bill allows the director of the division of parks and recreation to establish discounted rates for admission to any state-owned ski area. Persons 65 up to 70 years old would no longer be admitted without charge but would be required to pay the discounted rate as determined by the director. Persons 70 years of age or older would be admitted free.

Current law allows any resident of the state who is 65 or older to be admitted to any recreation area without charge.

SENATOR W. KING: We all know that Senator McLane absolutely loves to find at least one bill during the session which embraces motherhood, apple pie and all those nice things, including showy lady slippers, pink lady slippers, butterflies. This was an attempt by Senator McLane to do the same thing except that it backfired. Hundreds of people over the age of 65 and under the age of 70 descended on the State House and said that they didn't want to have their skiing rights taken away from them. The committee, after long deliberation, decided that we would give the authority to the Commissioner to make that decision.

SENATOR BLAISDELL: Where are we right now?

SENATOR DUPONT: Right now, we are on the committee amendment on SB 379.

SENATOR BLAISDELL: Well, Mr. President and members of the Senate, obviously this is a bill that Senator McLane would like to bury, there is no question about that. I opposed it at the committee hearing that day listening to the people that came in. I think that we owe this to these people. I think that Senator McLane would tell you, these are the people in this state that I have known for the last 45-50 years who have built skiing in the state of New Hampshire. They bring their children, they bring their grandchildren there, it is something that is going to cost the state of New Hampshire \$45,000, they are going to get \$45,000 out of this if you pass the original bill. It is not a good piece of legislation. Senator McLane will tell you so and I could go on for hours talking to you about the people like Roger Peabody and Penny Pitou and people like that, who have built this thing in this state and who have built these areas in the state of

New Hampshire. This is a bad piece of legislation and you ought to throw it the hell out of here, it is just as simple as that.

SENATOR FRASER: Mr. President, is a motion in order at this time?

SENATOR DUPONT: Which motion, Senator?

SENATOR FRASER: The motion to indefinitely postpone.

SENATOR DUPONT: That is not in order, because the motion to amend is of a higher priority, Senator.

Committee amendment fails.

SENATOR W. KING: Mr. President, given the fact that the bill itself would raise the age to 70 from 65, and since Roger Heath was suppose to vote this out because I was against the bill, personally anyway, I am going to ask that you vote against passage of this at this time.

### **SUBSTITUTE MOTION**

Senator Fraser moved to have SB 379-FN an act changing the eligible age for free use of recreation areas from 65 to 70 and extending this privilege to all qualifying individuals postponed indefinitely.

Recess.

Out of recess.

Question is on the motion of indefinitely postponed.

Adopted.

SB 379-FN is postponed indefinitely.

### **SUSPENSION OF THE RULES**

Senator Currier move that the Rules of the Senate be suspended as to allow committee reports not advertised in the Senate Calendar.

**SB 417-FN**, relative to underground storage tanks.

**SB 423**, providing incentives for banks operating in New Hampshire to invest in New Hampshire communities.

**SB 437**, relative to the New Hampshire Dental Service Corporation and relative to the premium tax on health maintenance organizations.

**SB 445**, relative to fuel sold to vessels at state piers.

**SB 459**, limiting increases in electric rates.

A 2/3 vote is necessary.

Adopted by the necessary 2/3 votes.

Recess.

Senator Russman in the Chair.

**SB 459-FN**, limiting increases in electric rates. Economic Development committee. Inexpedient to Legislate. Senator Dupont for the committee.

SENATOR DUPONT: This one I assure you will take a little bit of time because this is a very, very complex issue. I would just like to bring to your attention that this is one of the early bills that the Senate Economic Development committee heard. As I indicated, it's an extremely complex issue, one that many of us have spent a significant amount of time working on. We got to a point where we felt that we could do nothing further to put this bill into a position where it would make good public policy in terms of putting it in place at the present time. Primarily, because there is a significant amount of issues that need to be addressed before the committee was comfortable in moving this legislation forward. I know Senator Hollingworth is going to give you a brief presentation on the merits of this legislation. I would like to reserve my comments, my remaining comments, until after she has spoken. The committee, obviously, was very concerned with the impact of this legislation and recommended that it be made inexpedient to legislate by the Senate.

### SUBSTITUTE MOTION

Senator Hollingworth moved to substitute ought to pass for inexpedient to legislate.

SENATOR HOLLINGWORTH: I would like to move inexpedient to legislate. Excuse me, ought to pass. The hour is late, excuse me, ought to pass. You can tell how tired and nervous I am. I would like to move ought to pass and speak to my motion. As you know, many of you know, that I have been up here quite a few years and this is perhaps the most important piece of legislation that I have sponsored. I am going to ask you to bear with me for a little longer than I should, because I know the old message, say it all in three minutes and sit down, but unfortunately, I feel that this is such a complex issue that I really do need to take the time and tell you why I think this is important, and why I need to have you support it. All year you have been hearing about the Economic Development packages, jobs, jobs, jobs; I don't think there is another piece of legislation that



is going to have an impact on the economy of the state of New Hampshire, except for this one. As you know, in 1989 we were promised that if we passed this special legislation that we would have stable rates, we would have a bankruptcy resolved and things would be fine in New Hampshire. Unfortunately, I thought that may be true, although I did not support the agreement. I supported stand alone PSNH I felt that at that time that the best way to go was to have a company that we had controls of in New Hampshire. So I appear before you today, and I know this is a surprise to many of you with the position that I have. The other day I was in Ed Dupont's office, and I guess name-calling has become commonplace around here. We hear pygmies and we hear nutty, and kooky, and stupid. I don't like to resort to name-calling, but Senator Dupont, who I think of as a friend, said to me "Bev, you know this bill, you know you can't go anywhere because you are tarnished." Well, you know, I looked at myself and I don't think that I am tarnished. I think that I deserved the reputation to stand up here before you because I have been involved in this process for a long time, just like any of the other bills that you stand up and support if you knew the issue. So with that I would like to comment, if I can. On what background that I have had, over the years my record speaks for itself. The record shows that I was right about Seabrook when I testified before the PUC and the NRC. The cost would result in the failure of Seabrook and other utilities. I was right when I said that the companies would refuse to pay their share of Seabrook. Not only has Seabrook gone bankrupt, but four of the twelve utilities, owners of Seabrook, have gone bankrupt. When I ran as the director of the New Hampshire Co-op opposing the barring of that small utility to invest in PSNH and warned that it would result in the bankruptcy of that small company, once again, I was right. When I opposed the use of New Hampshire's IDA bonds to EUA, I was right. As you heard on the Senate floor here the other day, the state of New Hampshire is now using our general funds to pay for \$22,000,000 that we loaned EUA. It gives me no satisfaction to have been right on any of these issues. I have not been able to prevent the dreadful results, but rather raising these concerns I must, I cannot remain silent. The possible future bankruptcy of our business and industries ultimate economic devastation of the future of New Hampshire. The pain and suffering caused to residential ratepayers was a very bad deal, and is a very bad deal for New Hampshire ratepayers and citizens. I believe that the rate of agreement to allow NU to acquire PSNH has already impacted the recession that we are experiencing in New Hampshire and in the New England region today. Unless we act now, we cannot change that situation. When I say now, I mean that we have to do it now, because the merger has not had its second phase; and if we do

not act before that second phase, we are banned from doing so. The bankruptcy court says that we have that right as a legislature. It says on, "the state expressly reserves the right to enter into similar agreements with other entities and to support reorganize plans proposed of itself, PSNH or other entities if it determines that this will be in the best interest of the state and its ratepayers." That is why I think we need to do it. We only have a short time before the rate agreement and the merger is confirmed. When that happens, the door closes on us. Last week on election day, over at the PUC, they were trying to borrow more junk bonds, double B plus, whatever, junk bonds, to pay for the bankruptcy of the junk bond holders we just had with the PSNH case. Now does that make any sense? We are borrowing junk bonds to pay off the junk bond dealers from the other agreement, and where did that get us? Several months ago, I was informed by the members of the Connecticut Public Utilities Commission investigating NEU acquisition of PSNH. They had been told that under oath, Mr. Busch, NU's Vice President, and I would like to hand these out and I would like to have you look at. This is Mr. Busch, NU's Vice President, he testified under oath, even if the rates were increased by 10 percent in New Hampshire, Busch stated that he had been told by the New Hampshire Attorney General, Harry Judd, that he would stand by the rate agreement no matter what the increases would be in New Hampshire. I have been informed that the Connecticut PUC has informed NU that the Connecticut ratepayers will not carry any of the increases that may be caused due to the NU acquisition to PSNH. They said that they really didn't care what happened in New Hampshire, that is our problem. NU stated that they are putting into regulations that no cost from Seabrook will be paid by Connecticut ratepayers. They suggested that we need to hold NU to the commitments, and yet NU would promise the moon and sun, but we could count on getting neither. Sales in New Hampshire have gone down. PSNH's 10Q, which is right here. I have to say that I did offer this information to everyone that was interested. There is a box here on the floor and another box over here. I wish that people had taken advantage of it, because it's all in here. It tells you exactly what is going to happen to us here in New Hampshire. The 10Q said 'the quarterly period ending September 30, 1991 which contains PSNH's current level of profitability, and states on page 25, operating revenues decreased 3.1 percent for the 4-1/2 months period ending May 15, 1991 as compared with 1990. Revenues from retail sales customers decreased 16.7 percent, and megawatt hour sales to retail customers decreased 6 percent. Revenues from wholesale customers decreased 73.9 percent. Sales to other wholesale customers megawatt hours decreased by 44.5 percent.' When the assumptions were made by NU and their

experts, they told us that we were going to have sales growth. They were asked repeatedly, Senator Dupont asked it, Senator St. Jean asked it, President of the Senate, Bartlett asked it, are you positive that your assumptions are right? They assured us. In fact, the AG says in his AG statement under the rate agreement, New Hampshire page 28, DR 89244. The 5.5 annual rate increases for the first 7 years will provide a fair rate of return to a financial viable PSNH NU, based on the effective stream from the percentages including the rate agreement. That 5.5 rate track will provide a stable source of power and sources to customers of known measurable rates and rate increases. It says that NU has met its burden to providing its unruly assessment regarding the rate agreement. In that its final forecasts are reasonable and that the 5.5 are achievable. That is our Attorney General saying that they can do it; the 5.5, and there is no question. I would like to have these charts handed out if I can, because I think that these are important to have you look at. Mr. Locke under oath, again in Connecticut was asked if the Booz, Allen report, which I have here. The numbers that this report gave were numbers that we are going to take and see in New Hampshire and if they were real numbers or if they were worse case? Under oath Mr. Locke, I mean Mr. Busch, excuse me. Mr. Busch said, "they are probable cases." What that means is increases, as you can see if you look at this. The Connecticut Department of Public Utilities Control hired an independent consultant firm, Booz, Allen and Hamilton and you can read this for yourself. But the low case incorporates some assumptions made by Booz, Allen and Hamilton about the economic effect. The actual experience to date has been worse than the low case. At the hearing of SB 459, Larry Smukler, the PUC chair was asked if he disagreed with the Booz, Allen and Hamilton projection. He said that he would get back to the committee with the answer and he didn't. To date the answer has not been provided. Failure to pass 459 will result in rates going above those promised to the citizens of New Hampshire at the time the legislature approved the NU takeover of PSNH. I hate to do this to you, I know you are all tired, and I don't like reading from things, but I think you need to see the facts, because what you are going to be told today, is that it is too risky to do this because the BIA doesn't want you to do it, and the Utility doesn't want you to do it. If you do it you might be making a bigger mess and your rates may go up. I am telling you that it is just not so. These are the actual numbers. The 5.5's are not going to hold. By 1994, 95 and 96 you are going to be paying 10 percent increases. Business is not going to be here. They are not going to worry what the rates are, they are going to be long gone. The utility probably will be long gone too, because there will be no customers, because we know what happens. The BIA report which is here that tells the

comparisons. And I am going to go back to my text, because I am going from one spot to another and I don't want to do that. When we passed the legislature HB 1, it did so with a stipulation that New Hampshire's co-op ratepayers would be treated at least as well as the ratepayers under the rate agreement for PSNH. Here is one of the many broken promises coming from NU PSNH, agreement that the agreement will takeover the 15 years, the reorganized plan increases the rates to the co-op by 117 percent. This is not the kind of agreement the legislature had in mind. Could the co-op have a better deal? They certainly could. Because they were offered from the New England Power Company. They offered rates of 2.75 cents per kilowatt in 1992, 93 and 3 cents in 1994 and 3.25 cents in 1995. Here are the figures in this, and again, I will pass it out to you just because I want you to have the documentations. I don't want you to have any question in your mind that there aren't facts that are backing up these numbers. The co-op is being used as a pawn. They are being forced to be customers of NU. And if you saw the rate agreement and the folder that I gave out with the co-op it shows you the rate schedule and what they are going to be paying. These are not my numbers, these are NU's numbers and what they are going to be paying or the new rate agreement that they are proposing for them. They are using the same bad assessments that they used way back in 89. They are saying that we are going to be having sales growth of 2.9 percent. This is a Tellas Institute, no way. We are going to have minus sales. We have another report forecast from the company's own members group, they say the same thing. I just can't make it clear to you, Nepool, we think Nepool is one that the BIA uses, their reports. What did Nepool say? Nepool said that "there will be no growth. The sales growth rate of the co-op is in the case of sales growth and PSNH reorganizers are overly optimistic. That is why it is impossible under the agreement to meet the requirements under the NU PSNH co-op agreement. The New England power contract forecast report capacity energy load and transmission for 1991 reports: forecast dramatically low needs, based on a weaker economy and greater price, including conservation in high project real electric rates. If I could only explain to you how frustrating it is, because I turn to Senator King who agreed to sign onto the bill, and some of the other sponsors agreed to sign on the bill, and I said, "have you called any of the people that I gave you?" I said the same thing to Ed Dupont and others, "have you called anybody", the PUC and Connecticut, Mr. Koss, more than willing to speak to us, nobody called him. Mr. Rodier over to the PUC, he was very helpful to me up until the point when he was told by Mr. Smukler that he no longer could talk to me without having a conference call. Whenever I called I had to wait while they went and got Mr. Arnold or somebody else to

come so that Mr. Rodier didn't speak to me alone, and it was a three party call, so he wouldn't be in a situation where he might tell me something. When we would have a conversation, I would get one thing from Mr. Arnold and another thing from someone else. But the facts are there. I guess it's going to have to be that you're going to have to trust me, just like I have trusted you and Ed Dupont when he came in here last year and he said 'you have to give businesses some savings, we are going to make these incentives for business. He is going to come in here in a couple of weeks with this big economic package and he is going to say trust me?' And you're not going to say to him okay, Ed, pull out all your papers, prove it. You're going to trust him because you think it's right and you think it's right for business. I am telling you this is just as right for business, and it is just as right for the ratepayers in New Hampshire. They've made all kinds of deals. You know one of the reasons why the BIA has decided that they want this and this is just one of the parts of the bill? In the legislature we passed a section that said "no ratepayer from the residential can carry the load for business." You can't pass the load from business onto the commercial. If you're going to make a deal, you do it within that same group and you treat them equally throughout the rate agreement. But what they're doing now over at the PUC is that they're making these contracts and they're saying if you are a big company, we will make you a rate so you won't leave like Plymouth College left, they figured that they can generate their own a lot cheaper than they can buy it from this deal. Cranmore left, all these businesses are leaving. The BIA report, again if I can hand out these reports, this is the BIA report, and it shows you what happens to jobs. Here we are going to have economic development in New Hampshire, but we are not going to have jobs, because this is what the BIA said, this is what is going to happen for every rate increase you make above the cost of living. The cost of living is 4 percent. One percent above if you stop losing. And it spirals because it keeps going. Because every time that somebody leaves, another customer has to pay, the rate goes up and up and up. Again, I have to show you that these are not my words, you are not just trusting me. The BIA said that 5.5 was the maximum that business could bear. Now the BIA comes into my bill and says 'we don't want 5.5, that is uncertainty. We don't want uncertainty'. Well do you know why? Because what they are doing is these rate contracts which I go back to. They're a big company and they can make this deal. And they get to take and have a cut, but guess who pays, the smaller businesses. What do you think is going to happen before very long? I say fine, if they want to make a deal, take it out of their revenues. I have no problem with the BIA getting a break. I would like to get a break if I were a big business, that's wholesale, you know if you buy more, you

get a break. But not at the risk of other small businesses, we can't afford it. This is the Booz, Allen report which we are going to be paying for by the way, because when the merger goes through, guess what? We will pay \$45,000,000 for NU's cost for the rate agreement. That is one of the first things that we pay. Of course then we have all of these deferrals that we couldn't get this time, because the rates did go up even though they came in and said no, the rates didn't go up. Senator Shaheen can tell you that two people, one from the PUC said yes, they did, and somebody else from NU said no. Then when he was questioned, he said well we were talking about 6 months instead of 1 year. He was talking about 1 year, but your rates went up last year, not at 5.5, but 8.3. I can guarantee you that I have never been as sure of anything more in my life that by 1994 rates are going to be 10 percent. This is the report from the Booz, Allen that I have been talking about. This is an independent firm hired. On the last page the very summary says, "most of the risk would be borne by NU shareholders and PSNH New Hampshire ratepayers." Okay, you don't want to believe me, call Mr. Koss down at the PUC in Connecticut. I'm sorry for NU, I hope that they can do it within the 5.5 if we pass this bill, and I think that they can. What they don't do, is they don't buy that company in Vermont that they want to buy. They don't buy EUA out who has no assets anyways, who went bankrupt, and who owes the state of New Hampshire \$22,000,000. They have lots of places that they can cut if they really want this deal. They can do it. There is no reason for them not to and we are going to hear that the power is going to go off again, the lights are going to go out, we are going to be back in litigation. All of those awful things that you heard before, why we got into this mess in the first place. I say, no. They told us that they could do 5.5, let's do 5.5. If 5.5 isn't right, when they get to the House, they can tell us they need 6 if it's going to be 6. But we have to have a cap. We have to assure business, we have to assure the people in this state that they are going to take and have, that is why we got into this in the first place, and that you're not going to be bailing out more junk bond holders next year, because we made this bad deal and people are going to leave the system. We went with NU because we were told they were such a good management company. You know who is managing Seabrook down there, operating it down there, not managing it? Yankee. And you know that they're going to be there after, and in fact, if we didn't go through with this deal and the merger, they would still be there until 1995 if we wanted them there, because that is in the agreement. It says that they will stay on to manage as long as we want them. The NRC has said some several years ago, that NU was a good company, a good operator, had lots of nuclear power plants, would be a good manager for PSNH or NU. Not true any-

more. The glow has gone off their halo. The NRC says, uh-uh, bad guys. They even are saying, you cannot manage Seabrook. Yankee is going to stay in place. Now, again, I don't know what to tell you, it's your decision. You have to remember one thing, who asked for this bill? The people of the state of New Hampshire got awful mad Tuesday. They don't like it anymore, they can't afford it anymore, they are fed up. That is what we need to be looking for. The municipalities, and the cities, and the towns that came to testify for this bill. League of women voters, senior citizens, senior citizen groups. They were the ones there, the people of this state. The people opposing the bill, the BIA, the utility. Larry Smukler, sure Larry didn't like it, because Larry Smukler was the chief negotiator and now he sits on the PUC on the same cases that he put into place. Now he isn't going to say that this is a bad bill, plus he can't. In this contract we say: the state of New Hampshire is bound by law to fight this deal through, whether it is a good deal or a bad deal, they can't speak against it. They can't unless it's agreed upon, they can't break the deal. It has to be NU and PSNH agree to break it. If they don't, they have to pay this big \$45,000,000 or \$25,000,000 or whatever is the fine. There is only one person that can break the deal or one person that can go back and modify it and, we can modify it. They have already modified it three times. Senator Bartlett, when he sat in that Chair said, "look, I don't want the PUC making all the decisions. If they modify that damn thing, they are coming back and they are getting the approval of the legislature". Well guess what folks? They haven't come back, and it has been modified three times. We have the opportunity to modify it. We are the state of New Hampshire. Do you want your ratepayers to pay 10 percent? That is your choice today. It is hardball. It is not going to be easy, and you're probably going to have somebody say 'oh business, oh uncertainty, we are going to lose Pease. You are going to lose them if you don't do something now. You have your choice, I can't say anymore. It is a tough decision, but I can tell you just as sure as I am standing here, I am going to be right on this one like I have been right on the last ones.

SENATOR COLANTUONO: Senator Hollingworth, this bill only applies to two of the electric companies in the state, is that correct?

SENATOR HOLLINGWORTH: That is what the rate agreement applied to and that is what the legislature in 1989 applied to. It is constitutional by the way, I asked the Attorney General and he said it would be constitutional.

SENATOR COLANTUONO: Well, did you ask him about the equal protection clause?

SENATOR HOLLINGWORTH: We can do that. That was decided in a court case over on the hill when we did it with the rate agreement. That went to court and it was decided that we can do it, the legislature can do it.

SENATOR COLANTUONO: So that if some other electric company wanted to raise their rates 10 or 15 percent, that would be okay, but these two companies couldn't?

SENATOR HOLLINGWORTH: I can tell you that there aren't other companies raising theirs 2 percent and we don't need to worry about them, because Unitil is keeping their rates down, and if you find out they are buying cheap, and they intend to keep their rates down. If you talk to Granite State, they're keeping their rates down. We don't need to take and oversee them, because they're not causing the problem in this state. The rate agreement that we are discussing here today and the 5.5's are the rate agreements that we had before.

SENATOR W. KING: First, I want to say that there is nobody in this place that is more detailed in terms of the work that she does than Senator Hollingworth. I have admired the work that she has done in the past and I have to respectfully disagree with her today. I do that knowing that there is no political gain in my taking a position that is on the same side with NU or the BIA or any of those folks to be had for me, because chances are that most of the time, I won't be with them on a lot of the issues that we face in this Senate Chamber anyway. But I do believe that this bill, as Senator Hollingworth has said, is about economic development. I think it is an important economic development issue. When we talk about economic development, we talk about a lot of things. Probably the most important things right now are creating the conditions for investment capital to come into the state of New Hampshire or to be generated in the state of New Hampshire and generating jobs. But there are many other conditions that we have talked about in this chamber from time to time, and were in the Senate Economic Development committees report. But the one thread that binds all of those conditions together is the stability of the economic atmosphere in the state of New Hampshire. Operating costs, energy costs, but costs in general and the stability, both regulatory stability and financial stability of the market. NU invested in the state of New Hampshire. They took PSNH from bankruptcy and they did that with a rate agreement that was agreed to in this chamber. A rate agreement that I might add, was not merely 5.5 percent. It is disingenuousness for anyone to represent that the rate agreement that we had was a straight 5.5 percent. I voted against that rate agreement because of those other factors. Because there was the possibility that rates might, if fuel



costs rose, which they are falling dramatically right now. That rates might go above the 5.5. But I voted against it for another reason. More important to me at the time and that was, that the whole deal I thought, smacked of cronyism, favoritism, political gamesmanship and today we are seeing the same thing with the New Hampshire Electric Cooperative. But the players will not change if we adopt the 5.5 cap today. Those same players will be at the table negotiating whatever it is that we have to do beyond that. At the time that I voted against the deal and many of the people in this chamber voted against the deal, we were casting a vote to forestall an agreement. We lost. That agreement came into being, and now we are looking at the possibility of overturning an agreement that we have. Overturning a contract that we have with a business in the state of New Hampshire. That outcome, I believe, would undermine the creditability of the state of New Hampshire and could create significant uncertainty on rates. Now I know that there are other people in this chamber that believe by capping rates we would in fact, ensure stability. I respect the fact that some of those people believe that, but, I think, that there are too many factors involved that may mitigate against that. We don't know what the result of capping the rates would be. Perhaps NU would pull out of the deal, perhaps we would be sued for a breach of contract, perhaps PSNH could stand alone, perhaps they would go back into bankruptcy, in which case the full value of Seabrook would then be back on the table again, and perhaps we would have to pay for it immediately, rather than having it spread over a 10 year period. I think the details here are probably less important though, than the overriding issue. That is what is the message that the state of New Hampshire, that we in a state, send to businesses, and send to taxpayers, and send to state employees if we are willing to break a contractual agreement that we have made. Neither choice is good. The politically easy choice is to say yeah, okay we will cap the rates, because if you take the other side you can always be accused of voting to raise rates. None of us want high electric rates in the state of New Hampshire. That is why for two months we have worked to negotiate an agreement. An agreement that at least some of us found acceptable. An agreement that will allow this Senate to hire our own independent consultant, paid for by NU, but independent and under our guidance, who will look at issues like the fuel adjustment charge, who will look at issues at how we can reduce rates outside of the rate agreement. Can we institute conservation measures? This deal was struck as a means of finding a compromise; unfortunately, we weren't able to do that, but we tried. And if indeed this bill does not pass today, then we will still be able to go forward with this measure and have an independent analysis. Frankly, I don't know who to believe. Senator Hollingworth is a very

dear friend and she gives me a lot of details. I am beginning to wonder if this hasn't all developed into a discussion of, as I heard a few days ago, how many utility executives can dance on the head of a pin? There are so many details from both sides that it is very hard to sort it out, and that is one of the reasons why we felt that it was important for us to get somebody who represented the Senate and the House and take a look at these issues. The issue of the message that we send, if we are willing to break that contract, is a very serious one. Many of us stood on this floor last year and said that we were not willing to allow the Governor to go after the medical benefits of state employees in the state of New Hampshire because we had a contractual obligation with them. There are other examples. How can we hope to bring a company like Deutsche Air Bus into the state of New Hampshire if they see that we are willing to make a deal and then break that deal later on? The credibility of the state, I believe, is at stake to a large degree. I want to say one last thing. It is time for us to leave the Seabrook tar baby behind. It is time for us to stop fighting the battles of the past, because if we don't stop fighting the battles of the past that have already been won and lost, we are going to lose the battle for the future.

SENATOR HOLLINGWORTH: Senator King, I know the other day you said that you didn't trust the PUC anymore and you had concerns about them and consumer advocates and that is why you liked the idea of this independent person over there. But do you realize that that is what the PUC and the consumer advocates do and that to pay \$25 thousand for some expert to sit there and do the same thing, when we can require the PUC to come here and tell us, and if we don't trust the PUC anymore, or the consumer advocate, we can see about changing them? We do have that power, don't we, Senator King?

SENATOR W. KING: Senator Hollingworth, actually, I was quoting you, when I said, "you didn't trust the PUC and the consumer advocate," because the consumer advocate had come in and testified against the bill, and you had said to me later in the day that, I believe that you had said to me, "that you doubted the credibility of the consumer advocates testimony." There are many people who don't trust anything that they have heard outside of this chamber from the various parties. I am not trying to put words in your mouth. If you didn't say that, I apologize. But I did not say that I didn't trust them, what I said was, that I don't feel confident in the veracity of the information that we have gotten from anybody, and that we need somebody who is representing us. Beyond that, we need that person not just to look at the terms of this rate agreement, because I believe that we are tied into this rate agreement to a large extent. We

need to go beyond that. That is why we need to leave the Seabrook tar baby behind. We need to now begin to work together to look for other ways that we can reduce, that we can stabilize, and hopefully, reduce utility rates in the state of New Hampshire, and they are available. Conservation measures with the state working together with utility companies could have a stabilizing and possibly, even help reduce electric rates.

SENATOR DISNARD: I did not vote for the buyer. I can remember the leadership standing up there and answering questions, would it be just 5.5 percent over a period of years, would there be three years without an increase? The answer was the increase would be purchase of power. We heard that. It was voted that. All of us didn't agree with it. I can remember the last few weeks, the voters listening to Pat Buchanan when he said, "read my lips and they made fun of him". I am not going to go home to my voters and have them say the same damn thing. We agreed to 5.5 percent and we should live with it, and the voters have to trust us. I get concerned when I hear if someone might speak something that shows they are a Seabrook person. I wasn't anti-Seabrook, I'm not now. But I am just concerned when I hear that we are going to raise the rates. We are going to raise the rates on the three-year-period when it was told to us by leadership for those who approved the majority, that it would be a basic 5.5 percent.

SENATOR W. KING: Senator Disnard, you voted against the NU deal with me is that correct?

SENATOR DISNARD: That is correct.

SENATOR W. KING: And did you at that time, know or did you at that time hear the debate on the floor of this Senate discussing the circumstances under which the rates might rise above 5.5 percent?

SENATOR DISNARD: It was my understanding, that the rate would rise if they had to purchase power. I also can remember supporting administration when the administration convinced us on our side that we should support PUC right down the line. Then we found out one day that wasn't happening, because the man in the corner office, without them knowing it, changed his mind the night before.

SENATOR W. KING: So, Senator Disnard, your answer was yes? You did know that the rates might go above 5.5 percent if fuel cost warranted them knowing about that?

SENATOR DISNARD: With the approval of PUC, yes.

SENATOR COHEN: I was not here when the NU deal happened. I was able to write some articles for Seacoast Sunday in opposition to the NU deal. I wish I had been here to vote against it. It was a bad

deal. As Senator Wayne King mentioned earlier in regard to other legislation. If the legislature makes mistakes, we can, and have a responsibility, to revisit those mistakes. Senator Wayne King also wondered what the message would be to business if we passed this piece of legislation. Well, I think the message is, that we have the courage and the integrity to recognize when we have made a mistake and to correct that mistake. There is a wonderful book about not having the ability to recognize mistakes by Barbara Tuchman, *The March of Folly*. We can recognize a mistake and get out of it. Here is our opportunity to recognize that mistake. With regard to Air Bus coming in, I certainly want Air Bus to come in. If they make an agreement to not pollute and to live by clean air acts standards, then we have to expect them to stay with those standards. The suggestion of leaving the tar baby of Seabrook behind us, well we can't leave the tar baby behind us; unfortunately, we are stuck with it. It is too late now for PSNH. They recognize that they made a mistake to go ahead with Seabrook. It would be a mistake for us today, and I think that we would regret in the future if we did not pass this bill, SB 459. I strongly urge its passage.

SENATOR DUPONT: A little while back when we had the debate on this floor about the NU agreement, I had hoped at that time that it would be the last time that I had to stand on this floor and talk about many of the things that we are discussing this evening. But clearly it wasn't, and that is unfortunate. Senator Hollingworth, I appreciate and commend your work effort, because I don't think there is anyone that has worked any harder on these very issues than yourself. Your intentions are honorable, and as you know during my legislative career during the 80's, I also spent a lot of time working on issues. We disagreed on the approach that the legislature had taken, but we both had the same thing in mind. I believe all of us tonight, whether we cast a vote for or against this legislation are all voting for lower electric rates. I would also like to just deviate for just one second and, Senator Hollingworth, you forgot to mention something when you said that you were tarnished. I also said that I was tarnished on this issue. I think I used the word tainted, rather than tarnished. You are probably being a little kind. Both of us got emotionally involved in this issue during past debates. When we came into this body people knew when we walked in the door or when we walked into this legislature to testify at a committee hearing, what side we were going to come down on, because our positions were entrenched, and even though we were debating the same issue, neither one of us were going to be convinced that we in fact, were wrong. When we debated this issue last time, the two weeks prior to the time that this issue came before this body, Senator Bartlett and

myself lived in Concord for those two weeks. For all intents and purposes we were here from five or six o'clock in the morning till twelve, one o'clock at night trying to get a better deal for the state of New Hampshire. PSNH went into bankruptcy not as a result of actions of this legislature, although I think in the earlier 80's or late 70's as a result of legislative action, we helped them go to bankruptcy. What I have said many times, even up to the point in which they went bankrupt where I had urged the legislature to take action to prevent the bankruptcy, and many argued against that saying that they deserve to be in bankruptcy. I probably wouldn't have argued that point. What I argued was whether or not it was in the best interest of the state of New Hampshire to have its largest utility end up in bankruptcy court. But you need a little bit of a history lesson. Although I hate to go back to the whole question of Seabrook, there were legislators that stood in this body and in the other chamber that promised you lower rates. That the construction of the Seabrook plant would be halted and delivered you a piece of legislation that put the legislature into the middle of setting electric rates. Now I don't disagree that the Seabrook plant should not have been constructed. I have said many times back in the early 80's, if it had been stopped we all would have been better off. We wouldn't have been here today arguing this. That PSNH did not have the capacity to undertake that project and didn't realize when to get out. The problem is that the legislature came in and instead of forcing them to stop construction, passed a piece of legislation that made everybody feel good, that ultimately, resulted in the bankruptcy of the company because it didn't go far enough. What we need is truth in legislation. There is a truth and lending law, that will require us to say exactly what we want to do. So if the purpose of this legislation and the consequences of this legislation is to put the NU deal back into bankruptcy court, then that is what it ought to say. Senator Hollingworth has put before you some good information to read, that I think you all ought to take a look at because it is true. The consequences of the NU deal is going to impact the state for many years to come. I just want to raise a couple of issues. One of the questions the committee asked: is the current rate agreement, and in the current environment, are rates going to go up? We have two separate answers, one from Senator Hollingworth and one from the company. Will this piece of legislation cancel the rate agreement? Senator Hollingworth said no, the Chairman of the PUC said yes. Will this put the company back into bankruptcy court? Senator Hollingworth says no, the company says potentially. Does this legislation potentially mean higher rates down the road if we end up in bankruptcy court? I can't answer that question. Will it put us into a position where more litigation is required? I can't answer that question. Will the full cost of

Seabrook be put back into the ratepayers electric bills if we end up in bankruptcy court again? I can't answer that question. This is not consumer protection, because the impact of the consequences of this legislation as I just laid out are not clear to any of us on the Economic Development committee, and I don't believe are clear to any members of this Senate. I am for lower electric rate, as I said earlier, we all are. I can assure you if there is anything that I could do within our, within my power, as a legislature to make sure that the people of the state of New Hampshire have that burden reduced, we would be doing it. But we need to know the consequences of what this legislation does. Senator King spent a significant amount of time trying to work with the company in coming up with some assistance for this legislature to understand the impact of this rate agreement. The complexity of it is so enormous that it is beyond the ability of any of us sitting in this body to understand. Senator Hollingworth mentioned \$45,000,000 or \$50,000,000 worth of cost associated. They weren't all legal costs, they were rate analysis, they were accounting firms. I went to a meeting one day on the issue of this bankruptcy and there were more lawyers and rate analysis and technical people in that one room than I have been with in any time in my whole life that is what it takes to understand this rate agreement. This is not a question of trust, because I don't distrust the intentions of Senator Hollingworth and I don't distrust the intentions of Senator King. It is a complex issue. The legislature needs good information to act before it takes this step. We will be back in session next January if the purpose of this legislation is not to cancel the NU deal, but to provide our constituents with lower electric rates. We've got a responsibility, to make sure that when we take this action it does in fact, accomplish what we want to accomplish. So I would urge the members of this Senate to act on good information and make sure that they fully understand the consequences of their actions. That while this bill may make them feel good as an earlier piece of legislation did, that had a result exactly opposite of what they intended, that they make sure this time that when they get themselves involved in this process, that the consequences are what they truly desire. Thank you.

SENATOR HUMPHREY: Senator Dupont, everyone has spoken well and convincingly, and that is the problem, both sides are convincing. Senator Dupont, can you give us in your best estimation, a chronology of what will happen if this bill is enacted?

SENATOR DUPONT: Senator, to be honest with you, I can't tell you. All that I can tell you is that the complexity of this deal is such that when we adopted this rate agreement, it took PSNH out of bankruptcy and put it into a stand alone company in a temporary

position until such time as the PUC in Connecticut. The PUC in New Hampshire approved the various arrangements that were involved as well as the transfer of Seabrook station into a separate company. Upon completion of those approvals, then a series of financing actions had to take place for NU to actually buy the stand alone company so that it became a subsidiary of NU. So the consequences are that there is in place, there is actually in place a financing deal that is in process, ready to start in which all of the conditions of that financing are based on that rate agreement that this legislature adopted when we acted in 1989. So you can't, I don't believe that you can stand here and say that the passage of this legislation will not put the company back into bankruptcy, because it will impact the ability of NU and secure the necessary financing to complete the transaction. You know you have raised the question that we raised in committee, and we didn't receive an adequate answer. We got two answers. I stand here today telling you that I don't think either side is being dishonest. I just think the committee felt that if we had our own technical experts that could go in and explain to us what rates are going to look like and what the consequences are to our actions, that we would all feel more comfortable in voting legislation such as this up or down.

SENATOR HUMPHREY: If the utility is forced back into bankruptcy then what are the likely scenarios?

SENATOR DUPONT: Well one of the things that is different right now is that the time when the company was in bankruptcy before, Seabrook station had not come on line, so there was value for Seabrook that reflected the fact that it was not on line. Once that plant received its final license and it began operating, then a cash flow from that facility was created. So that is one of the uncertainties of management of PSNH that has changed. The management team is new. They are for the most part, NU affiliated with NU, there would have to be a significant amount of legal work that would make a determination of what rates would be if this company was put back into bankruptcy, what the damages would be to NU, whether or not we as a legislature or the state of New Hampshire would be liable for having taken action that basically puts us in a position of having gone back on our agreement that was determined to be in the best interest of the state of New Hampshire, not only by the legislature, but by the PUC. It just is very, very complex. It is not anything like we have ever dealt with. It's the reason why legislators shouldn't be involved in setting rates, because it takes a host of lawyers and analysis to make those determinations. If I were to bring the NU deal in here, the documents would fill the ante-room.

SENATOR HUMPHREY: If I may, what were the nature of these assurances to the legislature that rate increases wouldn't exceed, what, 5.5 percent?

SENATOR HOLLINGWORTH: Page 35 by Senator Dupont. From page 23 to 25 is very good reading if you want to see what the guarantees to the legislature was, the 5.5's.

SENATOR DUPONT: Let me address that, Senator. What was involved in establishing the rate agreement, was the assumption that rates no higher than 5.5 percent would be acceptable in terms of economic impact to our economy. If you go back to 1989, there were growth assumptions made that would keep rates at the 5.5 or below. There were fuel costs projections that were built into it. There was a series of projections that if they were all realized, rates would be 5.5 or less. There is no question that the growth assumptions of 2 percent per year may not be realized. In fact, aren't being realized. Senator Hollingworth and I both agree on that. When we say that there was no guarantee that rates would be 5.5 or less, what there was is a guarantee that if the assumptions were accurate, and the assumptions were agreed upon by the state, and by the legislature, and by NU, and by the rate analysis that worked for the state of New Hampshire, we spent as a legislature, half a million on legal counsel. The state of New Hampshire probably spent another \$10,000,000 on rate analysis and legal counsel to represent us in this situation and we acted on their recommendation. I don't think that you can blame NU for bad assumptions on growth, on electric growth in the state of New Hampshire when we were all out being involved in the real estate market and doing things hoping that the economy that was then starting to show some decline at that time, was not going to go as low in terms of economic growth as it has. So we were a part of that blame for assuming that the rate assumptions for growth were in fact, conservative rather than optimistic.

SENATOR HUMPHREY: Is there not any room here at all for some kind of compromise?

SENATOR DUPONT: Senator, I can assure you that if there was any way that this committee could come up with something that we felt comfortable with in terms of compromise, we would have brought it to the floor. I can tell you that the last thing that I wanted to be talking about on the floor of this Senate this session, was anything to do with this rate agreement, anything to do with Seabrook station. It is an old wound that I thought had completely healed and it hasn't, so I can assure you that, my own personal opinion, is that we would be doing a dis-service to ourselves to act on the information that we have at hand without having a better idea of where we



are headed. If this was a business deal that you and I were involved in, we would have somebody standing at our side advising us on it, I can assure you of that.

SENATOR HUMPHREY: Parliamentary inquiry? Are other persons seeking the floor?

SENATOR DELAHUNTY (In the Chair): I have two further Senators for questions.

SENATOR NELSON: Senator Dupont, on page six of the bill I would like to just ask you about one sentence. I just wanted to have a better understanding, if you don't mind, on this last sentence? Actually, it commences on the bottom of page five, line 24, failure of the PSNH or the New Hampshire . . . then it goes on to say that the duties defer to safe and adequate service and facilities and then should constitute a forfeiture of its franchise. I wondered what that meant? I know the language, but . . .

SENATOR DUPONT: Could you just go back over that again?

SENATOR NELSON: Sure. I guess what I am trying to understand is, it starts on 362D:E, destructive rates, forfeiture of franchise. What does that mean if this bill passes?

SENATOR DUPONT: Senator, I would have to defer to Senator Hollingworth, because I believe that that refers to the 5.5 percent and it is a statement of, it is a judgement statement rather than an analysis, I believe.

SENATOR NELSON: Would it be possible to . . .

SENATOR HOLLINGWORTH: I think that I heard you talking about the franchises, and that is because we give a utility the ability to be a monopoly. We say here, you can provide all the power within this range. So we are saying that they can have the monopoly on the power as long as they provide nothing above 5.5. If they go above the 5.5 we withdraw their monopoly and we let somebody else step in. That is why it's not so when . . . and there are other people. When the offer was for \$2 billion, we had offers. We had other people who would have stepped in and taken the deal, but at \$2.3 billion they didn't want to do it. So there are other people who would step into the shoes for the monopoly, who would be delighted to step in, and to take over, and to provide us with the rates at 5.5. That is all that it does. It just says, sorry folks, you no longer have the monopoly, NU you are gone.

SENATOR NELSON: I think that this is a major issue, I am sure, for all of our constituents. I think that I would like to have a little more information about who is going to jump in here. I mean if the

oil rates change, and things change, and this company doesn't make 5.5, you're telling me they are down the tubes or whatever it is called? If in fact there is another company or companies or lines or lists of them out there, I think that we ought to know that. I think that we need to know everything. Because if this doesn't happen, if through some unforeseen circumstance, which we are not addressing today, this company doesn't do it, and it is a monopoly, then who is going to jump in, where are they with this economy? Who can afford \$2.3 billion? I was wishing that you could perhaps elaborate a little bit more on that, because I don't have all of your knowledge on this subject?

SENATOR HOLLINGWORTH: I would be happy to, but I have to go back a little bit if you don't mind. The 5.5 assumptions came from when they determined junk . . . this was one of those reversed, you know how bankruptcies would work? Usually they go to auction with the property and anybody bids on it and says this is what we will pay for it. This didn't happen in this deal. What happened was, they came in and they said here is what it is going to cost to pay off the junk bondholders and the creditors and this is what we need. They determined that the price should be \$2.3. Prior to that there were people who came in and bid on it, and they bid at \$2 billion and that company was NEES. They were willing to takeover the deal, but when it went to the \$2.3 they said it can't work at 2.3, it is too much, because you can't provide reasonable rates to your rate customers. You know how the deal came about? It didn't come about by a negotiating team of everybody sitting down. You know how it worked, Mary? The night that this was agreed, it was the Governor, the Attorney General, and there were two bidding companies, stand alone PSNH and NU. In 20 minutes NU thought they had the deal, I mean PSNH thought they had the deal with stand alone, they were jumping up and down, thrilled. The Governor went into the room, closed the door, ten minutes later came out, guess who had the deal? NU. In the testimony that is there, the negotiating team was asked in front of Mr. Dupont and Mr. Bartlett, Senator White asked the question, how did this deal come about, to the Chief Negotiator? He said, "I wasn't there". None of the negotiating team was there. That is how the deal came about. This was not a fine tuned negotiation, very highly tuned rate agreement. This was a rate agreement that was made for political moves. That is how it was made. It was not made in the best interest of the ratepayers, not at all in the interest of the ratepayers. This deal was made in the interest of what they could provide the junk bondholders and what a political person wanted to achieve, that is how it was achieved. It is right in the record by the Chief Negotiator if you want to read it.

SENATOR NELSON: That isn't the question. The question is not on historical dissertation of how this deal came about. I have been amiss that I haven't articulated my question clearly. The question is simply this: If in fact, the company which now does business for the state of New Hampshire for electricity, does not or for some unforeseen circumstance in the state of New Hampshire, is unable to continue that rate, this says that it shall constitute a forfeiture of the franchise. I understood you to say that there are casts of thousands or perhaps you said several other companies out there ready to jump in. If I am supporting a piece of legislation and I had not heard all the details of this, I need to know that if in fact, this company has a problem, for whatever reason, given the economy, some natural disaster, what are all these companies, where are they, who are they?

SENATOR HOLLINGWORTH: I'll tell you. I asked Wynn Arnold what was the worse case scenario?

SENATOR NELSON: Who were the companies?

SENATOR HOLLINGWORTH: Yes, PSNH would be the stand alone. Let me just explain to you why. I said when, if for some reason NU walks, what is the worse case scenario? Now Wynn Arnold said, you have a stand alone PSNH and PSNH would take and stand in the franchise, and, Mary, a bankruptcy is not that complicated. You can ask Senator St. Jean. He can tell you how bankruptcies usually work. This one was complicated.

SENATOR DUPONT: Well I think perhaps, I don't think I have ever asked Senator Colantuono a question. This could perhaps be a unique experience for me, not being an attorney, thank god, I would like to ask him a question. But in fact, this legislation enables the PUC to take a franchise away from the company because of an arbitrary number that we have established. I just asked a question, as an attorney, can it be that easy?

SENATOR COLANTUONO: No. Because if this bill passed, there would be immediate litigation to challenge just about every aspect and that would certainly be one aspect of the challenge. It would definitely be thrown into the court and not into this body.

SENATOR DUPONT: And would we not in fact, if we did that, be forced to compensate the company for an unlawful taking if it would be found and determined that the standards established in this bill are unfair?

SENATOR COLANTUONO: Yes. If it was determined that the company was entitled a reasonable rate of return which exceeded what we set as rates, then a court would say that we would have to compensate them for that taking.

SENATOR ST. JEAN: Senator Hollingworth, would you believe that we have heard some questions about bankruptcy asked to one of our attorney's in this chamber. Wasn't there an attorney who came back in 89 who was a conservative Republican attorney from Bedford, New Hampshire, that came to testify on bankruptcy. His name is Dan Sklar who is one of the premiere bankruptcy attorneys in this state? He said at the hearing last week, I believe, "in this bankruptcy, unlike any other that I have ever heard of, the creditors were directing what the revenues were going to be and they all decided that they wanted to get everything including their full junk bondrates even though they had made speculative investments. The stockholders who then held shares with the market value of \$3 a share, now hold stock at \$19.50 a share, meanwhile, the ratepayers and the businesses of New Hampshire are suffering a tremendous burden." That wasn't a bad return on investment. It was a heck of a lot better than bank stocks preformed in the last few years. What Mr. Smukler goes on to say, basically what I advocated then was, that the state should rely on the normal rate setting procedure. When Seabrook came on line, the PUC would have taken it into the rate base appropriate at its reasonable cost and investment, from that point of reorganization would have been structured so that the guaranteed profit, however it was, would be shared among creditors. Would you believe, Senator, this is one of the best bankruptcy attorneys in this state, a conservative Republican giving us this advice in terms of bankruptcy?

SENATOR HOLLINGWORTH: I would believe it. I think that I would like to just add one thing. When they keep saying that we go back into bankruptcy, what the court said was, that if Seabrook went back into bankruptcy, it would have to prove, if they went back in they would have to prove, used and useful. Right now, all of Seabrooks power is surplus.

SENATOR ST. JEAN: Would you believe, Senator Hollingworth, that back in 1989 I said this, "the rates, let me tell you if you think they are going to be 5.5 percent, I am going to tell you that they are going to be higher. They are going to be on the order of 7 to 9 percent. If you are concerned about the economic competitiveness of the state of New Hampshire, let me tell you, we are going to be the highest in the northeast, if not the nation. If you think that is going to attract business to the state, I am sorry, but I don't think it is?" Would you believe those words may well become the tar baby of the future of New Hampshire that we are never, ever going to be able to get off the dime on this? If we are truly concerned about the eco-

conomic vitality of this state and are going to relieve me of some of the auction business in the next few years, we ought to pass your legislation.

Senator Blaisdell moved the question.

Adopted.

Recess.

Senator Dupont in the Chair.

Question is on the substitute motion of ought to pass.

A roll call was requested by Senator Hollingworth.

Seconded by Senator Nelson.

**SENATOR DUPONT:** The Clerk, Gloria Randlett, will announce a pair, although Senator Heath's intentions were uncertain on each one of the specific pieces of legislation, Senator Blaisdell is going to pair with Senator Heath.

Paired votes: Senator Blaisdell and Senator Heath.

The following Senators voted yes: Oleson, Currier, Disnard, Pressly, Nelson, Humphrey, J. King, St. Jean, Shaheen, Hollingworth, Cohen.

The following Senators voted no: W. King, Fraser, Hough, Dupont, Roberge, Bass, Colantuono, Podles, Russman, Delahunty.

Senator McLane (Rule #42).

Yeas 11

Nays 10

Motion of ought to pass is adopted.

Ordered to third reading.

Recess.

Senator Hough in the Chair.

**SB 423**, providing incentives for banks operating in New Hampshire to invest in New Hampshire communities. Banks committee. Ought to Pass with Amendment. Senator Disnard for the committee.

**5103L**

### **Amendment to SB 423-FN**

Amend the title of the bill by replacing it with the following:

#### **AN ACT**

establishing a study committee on financial  
management of public funds.

Amend the bill by replacing all after the enacting clause with the following:

1 Study Committee on Financial Management of Public Funds.

I. A committee is hereby established to study the financial management of public funds. The committee shall consist of 3 senators, appointed by the senate president, and 3 house members, appointed by the speaker of the house.

II. The committee shall have the following responsibilities:

(a) To study the financial management of the state treasurer and municipal treasurers to ensure that public funds are invested at optimal yields and maturities.

(b) To study the feasibility of enabling the state treasurer and municipal treasurers to deposit public funds, possibly at discounted rates, in New Hampshire banks which participate in public finance programs chartered or authorized by the general court.

(c) To develop appropriate standards of participation in public finance programs which would serve to determine the eligibility of depository institutions for a public investment program.

III. Committee members shall receive mileage at the legislative rate.

IV. The committee shall submit a report on its findings, including any recommendations for legislation, to the senate president and the speaker of the house on or before November 1, 1992.

2 Effective Date. This act shall take effect upon its passage.

### AMENDED ANALYSIS

This bill establishes a legislative committee to study financial management of public funds.

SENATOR DISNARD: Mr. President, members of the Senate, the committee unanimously approved ought to pass for a study committee. The study committee was a meeting of everyone who was opposed and in support. It is a good compromise and we believe that it is worthy and needed and the treasurer also spoke and was not against this. We urge passage and approval, ought to pass.

Committee amendment adopted.

Referred to Economic Development committee (Rule #24).

**SB 437**, relative to the New Hampshire Dental Service Corporation and relative to the premium tax on health maintenance organizations. Ways and Means committee. Ought to Pass with Amendment. Senator McLane for the committee.

5106L

**Floor Amendment to SB 437-FN**

Amend the title of the bill by replacing it with the following:

**AN ACT**

relative to the New Hampshire Dental Service Corporation.

Amend the bill by replacing all after the enacting clause with the following:

1 New Hampshire Dental Service Corporation. Amend 1961, 345:3 to read as follows:

345:3 [Non-Profit] **Nonprofit** Status.

**I.** This corporation is not organized and shall not be maintained or operated for private profit or benefit. The income or property of the corporation from whatever source derived shall be applied solely toward the promotion of the purposes of the corporation as above set forth and no portion thereof shall be transferred to or inure to the profit or benefit of any member, officer, director, or employee of the corporation or any individual, provided that nothing herein contained shall prevent the payment in good faith of reasonable remuneration to any member, officer, director or employee of the corporation, or to any other person, or to any participating dentist who has entered into contracts with the corporation to supply dental care, for any services rendered to this corporation or to individuals pursuant to contracts with this corporation for dental care.

**II.** **Contracts between this corporation and its subscribers pursuant to the purposes of this act shall be considered insurance contracts and such contracts shall not be exempt from the provisions of the insurance laws of this state. The New Hampshire Dental Service Corporation shall be considered an insurance company and shall comply with all insurance laws governing such companies including, but not limited to, RSA 400-A:32.**

2 Effective Date. This act shall take effect January 1, 1993.

**AMENDED ANALYSIS**

This bill subjects the New Hampshire Dental Service Corporation to the state insurance laws, including the premium tax.

SENATOR MCLANE: I want to say that the Ways and Means had two hearings on this bill. It started out as a tax on HMO's and on Delta Dental. It became clear to us that although perhaps a tax was not appropriate, that Delta Dental had some unanswered questions as to their makeup of their board and the size of their surplus. We

have amended the bill to make Delta Dental, which is a nonprofit dental association, subject to the supervision of the Insurance, and that is what you have before you. We have not changed the makeup of the board, we have not taxed anyone, but we have put under the control of the Insurance Department, this supposedly nonprofit dental corporation.

Committee amendment adopted.

Ordered to third reading.

**SB 445**, relative to fuel sold to vessels at state piers. Ways and Means committee. Ought to Pass with Amendment. Senator Hollingworth for the committee.

**5087L**

### **Amendment to SB 445-FN**

Amend the title of the bill by replacing it with the following:

#### **AN ACT**

establishing a committee to study issues  
relating to the fishing industry.

Amend the bill by replacing all after the enacting clause with the following:

1 Committee Established; Membership. There is hereby established a committee to conduct a comprehensive study of all aspects of the commercial fishing and marine industry, including, but not limited to, fuel sold to vessels at state piers, fuel costs, pier usage, parking, harbor masters, moorings, and fees and concessions at state piers. The committee membership shall be as follows:

I. Three members of the senate including the senators from districts 23 and 24, appointed by the senate president.

II. Three members of the house of representatives, including 2 representatives from the areas of Hampton, Rye, Portsmouth or Seabrook, appointed by the speaker of the house.

III. The director of the division of parks and recreation, or designee.

IV. Two members from the Yankee Fishermen's Cooperative, appointed by such cooperative.

V. Two members from the Tricoastal Seafood Cooperative, appointed by such cooperative.

VI. Two harbor masters, including one from Rye, appointed by the chief harbor master.

VII. Two lobster fishermen, appointed by the New Hampshire Commercial Fishermens Association.



VIII. Two members from the Interstate Passenger Boat Association, appointed by such association.

IX. One member from the New Hampshire Commercial Fishermen's Association, appointed by such association.

X. One public member, appointed by the governor.

2 Meetings; Chair; Public Hearings. The first meeting of the committee shall be called by the first senator appointed to the committee and shall be held no later than July 15, 1992. The chair of the committee shall be chosen by the members at the first meeting. The committee may hold public hearings in the Seacoast area as it deems necessary. All meetings of the committee shall be held in the seacoast area, the specific area to be determined by vote of the committee.

3 Report. The committee shall report its findings and recommendations, including any proposed legislation, to the president of the senate, the speaker of the house, and the governor on or before November 1, 1992.

4 Compensation. The committee members shall serve without compensation except that legislative members shall receive mileage at the legislative rate.

5 Effective Date. This act shall take effect upon its passage.

### AMENDED ANALYSIS

This bill establishes a committee to conduct a comprehensive study on all aspects of the commercial fishing industry.

SENATOR HOLLINGWORTH: The committee on Ways and Means would like to move ought to pass with amendment on SB 445. What the amendment does is establish a study committee to look into all areas of the marine service and the marine fishing industry, lobster fishing industry and to also explore the areas of fuel sold at the state piers, moorings, parking, harbor masters and all other aspects of the marine service industry with the hope of helping that industry develop and be viable.

Committee amendment adopted.

Ordered to third reading.

SB 417-FN, relative to underground storage tanks. Environment committee. Ought to Pass with Amendment. Senator Russman for the committee.

5098L

### Amendment to SB 417-FN

Amend the title of the bill by replacing it with the following:

## AN ACT

requiring notification of associated costs of converting fuel heating systems and allowing recovery for costs of removal of leaking residential tanks from the oil discharge and disposal cleanup fund.

Amend the bill by replacing all after the enacting clause with following:

1 Home Heating Oil Added. Amend RSA 146-D:1 to read as follows:

146-D:1 Purpose. The general court finds that gasoline [and], diesel fuel **and home heating oil**, due to their extreme fluidity and suspected carcinogenic qualities, comprise a sufficiently distinct class of property which represents a potential serious health and safety problem to the citizens of New Hampshire. In particular, gasoline [and], diesel fuel **and home heating oil** present a potential threat to the quality of New Hampshire's groundwater and environment because of the speed with which these products are able to flow into, and contaminate, valuable groundwater supplies. The purpose of this chapter is to establish financial responsibility for the cleanup of oil discharge and disposal, and to establish a fund to be used in addressing the costs incurred by the owners of underground storage facilities for the cleanup of oil discharge and disposal, to protect groundwater, and for reimbursement for third party damages. The fund established under this chapter shall be in addition to the oil pollution control fund established pursuant to RSA 146-A:11-a.

2 Definition Changed. Amend RSA 146-D:2, II to read as follows:

II. "Facility" means a location consisting of a system of underground storage tanks, pipes, pumps, vaults, fixed containers and appurtenant structures, singly or in any combination, which are used or designated to be used for the storage, transmission, or dispensing of oil or petroleum liquids[, and which are within the size, capacity and other specifications prescribed by rules adopted by the division pursuant to RSA 146-C:9, VI].

3 Eligible Expenses Changed. RSA 146-D:6, I is repealed and reenacted to read as follows:

I. The fund shall be available to owners of underground storage facilities. Facilities subject to the provisions of RSA 146-C shall be in compliance with implementing rules issued by the department of environmental services in order to receive reimbursement from the fund.

4 New Subdivision; Conversion of Fuel Systems. Amend RSA 339-B by inserting after section 12 the following:

### **Fuel System Conversion**

339-B:13 Duties of Suppliers. Any fuel supplier who installs a fuel heating system, at the request of a property owner, where a different type of fuel heating system already exists, shall be responsible for the following:

I. Securely capping both ends of all fill and vent pipes connected to the fuel oil tank.

II. Notifying the property owner of all costs associated with the installation of the new system including:

(a) Removal of any fuel remaining in the fuel tank.

(b) The costs of capping all fill and vent pipes.

(c) Removal of the fuel tank.

III. Notifying the previous fuel supplier that the system has been converted.

339-B:14 Notification. Any fuel supplier requested to convert a fuel oil system shall supply the property owner with a notice, supplied on a separate sheet of paper, of the costs associated with the conversion as provided in RSA 339-B:13, II-III.

5 Effective Date. This act shall take effect 60 days after its passage.

### **AMENDED ANALYSIS**

This bill requires any fuel supplier who installs a fuel heating system, where a different type of fuel heating system already exists, to notify the property owner of the associated costs.

This bill allows an owner of a leaking underground residential storage tank to recover the costs of removal of the tank and associated remedial measures from the oil discharge and disposal cleanup fund.

SENATOR RUSSMAN: Yes, the committee recommends ought to pass with the amendment. This takes into consideration removal of fuel oil from tanks, they may have pipes underground that have leaked, so that there would be payment available for that. I am not sure how that insurance effects that, but there is a fund available and this would add them to be a part of that.

Committee amendment adopted.

Ordered to third reading.

### **TAKEN OFF THE TABLE**

Senator Pressly moved to have SB 381 relative to interest on escrow accounts taken off the table.

Adopted.

**SB 381**, relative to interest on escrow accounts. Banks committee. Ought to Pass. Senator Pressly for the committee.

**SENATOR PRESSLY:** The committee would like to present the floor amendment which will be a replacement amendment to the one that has been passed out. It is with some effort that we came up with what we feel is an appropriate, reasonable, fair way to solve the problem of the interest paid on escrow accounts. If you recall, there was a difficulty with the differences between the mortgage bankers and the savings banks. If you notice the floor amendment has two separate portions of legislation. The reason for that is that we have put the same language into the statutes relative to mortgage bankers and savings banks. The effort was this, we wanted to find a way that would be equal and fair to all types of institutions that would have this type of escrow account. We also wanted to find a moveable, commonly accepted entity, that would move with the market so that whatever happened in the future that this would move along with it. The item that we thought best represented the markets in New Hampshire was the regular passbook savings account. So the formula that we have come up with is that this interest rate will . . . it is a minimum interest rate and it will be set every six months by the Bank Commissioner on January 1 and July 1 of each year. The rate will be one percent below the average interest rate paid by New Hampshire Savings on regular passbook savings accounts. What this means is that twice a year this rate will be set, it will move with the markets: therefore reflecting the economy. It will be one percent below that rate to accommodate for the cost that any institution of course and just to administer it. We like the idea because we feel that it will move with the market. When the economy starts taking off, they will not have to come back to the legislature to change this, it will just move with it. It also allows any of these entities to offer a higher rate, which means also that competition will remain alive and well in the market place. We are pleased to offer this amendment to you and to ask for your support of ought to pass with amendment.

Senator Pressly offered a floor amendment.

**5108L**

### **Floor Amendment to SB 381**

Amend the bill by replacing all after the enacting clause with the following:

1 Interest on Escrow Accounts. Amend RSA 384:16-c to read as follows:

384:16-c Interest on Escrow Accounts. Any bank which requires or accepts moneys for deposit in escrow accounts maintained for the

payment of taxes, insurance premiums or other expenses related to loans on property secured by real estate mortgages shall credit each such escrow account with interest at a **minimum** rate [of not less than 5 percent per year] **set for a 6-month period by the bank commissioner on January 1 and July 1 of each year which shall be one percent below the average interest rate paid by New Hampshire banks on regular passbook savings accounts.**

2 Escrow Accounts of Mortgage Companies. Amend RSA 384:16-e to read as follows:

384:16-e Escrow Accounts of Mortgage Companies. Any company which is in the business of or customarily makes loans for the purpose of financing the acquisition of single family homes and which is not subject to the requirements of RSA 384:16-c and which requires or accepts moneys for deposit in escrow accounts maintained for the payment of taxes, insurance premiums or other expenses related to loans on single family homes secured by real estate mortgages on property located in New Hampshire shall credit each such escrow account with interest [at a rate of not less than 5 percent per year] on all existing and future accounts **at a rate set for a 6-month period by the bank commissioner on January 1 and July 1 of each year which shall be one percent below the average interest rate paid by New Hampshire banks on regular passbook savings accounts.**

3 Effective Date. This act shall take effect July 1, 1992.

### AMENDED ANALYSIS

This bill requires banks and mortgage companies to pay interest on escrow accounts at a minimum rate of one percent below the average interest rate paid by New Hampshire banks on regular passbook savings accounts.

SENATOR HUMPHREY: Why is it set for one percent below the passbook rate?

SENATOR PRESSLY: The logic behind that is that the banks and the mortgage companies still are in the business to make a profit, and the interest rate, the passbook amount is what they are allowed to bring in, what they are allowed to charge. So for them to offer the same amount, does not leave them a reasonable margin at which to cover just their paperwork and their accounting. We thought also, in this form, that this one percent remain the same, assuming that basically their cost of doing business would not fluctuate the same way that the market would, so we thought that was a good thing.

SENATOR HUMPHREY: Well let us say that it is January 1, what figure does the Banking Commissioner use, the interest rate of the previous day or some average or what?

SENATOR PRESSLY: No. The Banking Commissioner would take the average interest rate paid by New Hampshire banks on regular passbook savings accounts. My understanding is that the Bank Commissioner keeps a record of this on an ongoing basis. This is not going to have to be something that he is going to have to research, it is going to be data that is collected and already before him. The reason that we choose this is that the regular passbook savings account on our own banks certainly reflects the market forces within our own area and it seemed to be an account that most everyone involved had the greatest faith in, this versus a federal account that could be politically set. This truly effects the marketplace rate.

SENATOR HUMPHREY: Just one more question, because my question, frankly, still isn't answered.

SENATOR PRESSLY: Oh, sorry.

SENATOR HUMPHREY: If today is January 1, does the Bank Commissioner take the average statewide interest rates in effect on the previous day or how does this work?

SENATOR PRESSLY: I would assume the previous working day.

SENATOR HUMPHREY: So it is not some average of the previous six months or something like that?

SENATOR PRESSLY: That is my understanding, that it would be whatever the market forces were at that time. We had thought, should it be changed all the time and we choose the six month, because it just seemed unreasonable to have it changing all the time, it is a fluctuating rate, so it is moving all of the time. Six months seemed like a reasonable length of time to hold it steady.

SENATOR FRASER: Yes, I would be remiss, Mr. President, if I didn't just compliment Senator Pressly, for solving what was a really awful problem for me when I was trying to put this bill together, initially. She did a superb job this morning with the help of the committee. At any given time the Banking Commissioner can average out what the savings account rates are, Senator.

Floor amendment adopted.

Ordered to third reading.

### TAKEN OFF THE TABLE

Senator Currier move to have SB 412-FN-L an act relative to signage by nonprofit organizations in zoned commercial or industrial areas taken off the table.

Adopted.

**SB 412-FN-L**, an act relative to signage by nonprofit organizations in zoned commercial or industrial areas. Transportation committee. Ought to Pass. Senator Currier for the committee.

**4839L**

**Amendment to SB 412-FN-LOCAL**

Amend the bill by inserting after section 2 the following and re-numbering section 3 to read as 4.

3 New Section; Exemption Added. Amend RSA 236 by inserting after section 71 the following new section:

236:71-a Nonprofit Organization Exemption. Nothing in this chapter shall preclude nonprofit organizations from temporarily erecting an advertising device for the purpose of promoting an event or activity.

**AMENDED ANALYSIS**

This bill permits nonprofit organizations to temporarily erect an advertising device for the purpose of promoting an event or activity.

**SENATOR CURRIER:** The committee amendment in the calendar is incorrect. Either the committee secretary or the committee inadvertently . . . the amendment was written incorrectly. Madame Clerk, in the Senate Calendar or whatever, on February 6 when the bill was placed on the table, the amendment that printed in the calendar was incorrect. The Senate Transportation committee has a floor amendment #5123L which corrects the original committee amendment that was placed in the calendar, that was the reason that the bill was placed on the table. The committee report is basically to allow nonprofit organizations to temporarily erect an advertising device for the purpose of promoting an event or an activity. During the Desert Storm Operation, there were many Veterans Associations and Veterans Organizations in the north country as well as in the southern part of the state that placed banners across state highways and were told by the Department of Transportation that they were required by law to take them down. There are other types of events throughout the state that are also hassled by the state Highway Department because of the wording of an existing law, relative to the placement of temporary signs noting hospital fairs, church fairs and county fairs. This bill addresses that problem by allowing temporary erection of advertising devices for the purpose of promoting the event or activity.

SENATOR HOUGH (In the Chair): Senator Currier, I believe that you are speaking on the corrected floor amendment offered by the committee. We are now on the original committee amendment. We must vote on the original committee amendment, and if it passes, you will then offer a floor amendment that addresses the technical error in the committee amendment. Is that the way that you are proceeding?

SENATOR CURRIER: I guess that I would have to ask a parliamentary question.

SENATOR HOUGH (In the Chair): Well I think that you have two options. You could defeat the committee amendment and offer the floor amendment.

SENATOR CURRIER: The committee amendment is in error.

SENATOR HOUGH (In the Chair): That is understood. You could defeat that and offer a floor amendment that takes care of the deficiencies or you could pass that and correct it by the floor amendment.

SENATOR CURRIER: Is that how the rules state that is must be done?

SENATOR HOUGH (In the Chair): You have to address the committee amendment which is part of the report.

SENATOR CURRIER: I am substituting the committee amendment.

SENATOR HOUGH (In the Chair): You can't substitute, you have to dispose of the committee amendment and then offer a floor amendment.

SENATOR CURRIER: We need to change the process by which this body does things in the future.

SENATOR HOUGH (In the Chair): You are in a win, win situation, Senator.

SENATOR CURRIER: But this is absurd.

SENATOR HOUGH (In the Chair): Pass it or defeat it, and then take your floor amendment, whatever you want to do.

SENATOR CURRIER: Right, that is why all of the confusion, whatever you say, Mr. President.

SENATOR HOUGH (In the Chair): Well, you are speaking for or against the bill?



SENATOR CURRIER: I am speaking for the correct amendment.

SENATOR HOUGH (In the Chair): Well, you can't get to that point until you dispose of the original committee amendment of which you have in front of you at this point.

SENATOR CURRIER: Okay. So I am standing to oppose the incorrect committee amendment.

Question is on the committee amendment.

Committee amendment fails.

SENATOR CURRIER: The floor amendment which is the correct Senate Transportation committee amendment is #5123L and I would urge the Senate to adopt the committee floor amendment.

Senator Currier offered a floor amendment.

### **5123L**

#### **Floor Amendment to SB 412-FN-LOCAL**

Amend the bill by replacing section 1 with the following:

1 New Section; Exemption Added. Amend RSA 236 by inserting after section 71 the following new section:

236:71-a Nonprofit Organization Exemption. Nothing in this chapter shall preclude nonprofit organizations from temporarily erecting an advertising device for the purpose of promoting an event or activity.

#### **AMENDED ANALYSIS**

This bill permits nonprofit organizations to temporarily erect an advertising device for the purpose of promoting an event or activity.

SENATOR MCLANE: Senator Currier, I represent a community that feels very strongly about signs and has some very excellent sign ordinances. Does this mean that this amendment would take precedent over any local zoning ordinance?

SENATOR CURRIER: My understanding, Senator, is that this legislation deals with state highways. It is state law, not local ordinances.

SENATOR MCLANE: I guess I have a couple of other questions. The first one being the definition of temporarily. Does that mean for a month or a day or a week?

SENATOR CURRIER: My understanding is that it would be up to the discretion of the Commissioner of the Department of Transportation to determine through Rules what temporary means.

SENATOR MCLANE: I guess my next question is about state highways. If it was a good cause, and it was a charity, and nonprofit, could they put a banner across the state highway that said 'Bingo tonight at the Elks'?

SENATOR CURRIER: Senator, my understanding is that this doesn't involve the interstate highway system. Unlike permanent billboards, which are licensed by the state of New Hampshire, these are temporary.

SENATOR MCLANE: So then the next question would be that you could put it on, say the highway going into Plymouth, 'Bingo tonight at the Elks'?

SENATOR CURRIER: That is a likely possibility. If it was a non-profit bingo.

SENATOR MCLANE: What if there were 30 bingos being held that night?

SENATOR CURRIER: If there were 30 bingos being held in Plymouth that night, I would say that would be very exceptional, Senator.

SENATOR MCLANE: Does the Department of Highways have to approve these signs in any way or are they by this amendment just grandfathered in or just allowed in? What if one of the signs was deep purple and had some incorrect word in it like s-e-x or something? Would there be any control over that sign?

SENATOR CURRIER: It is my understanding, Senator, that these advertising devices would be regulated just like any other advertising devices outlined in the statute which is RSA 236:70.

SENATOR MCLANE: Okay.

SENATOR W. KING: Very briefly. Just a reality check. I think it was Senator McLane who brought up some interesting points, but they're relatively irrelevant. Communities for years now have been putting up signs and banners on their streets that say 'Hospital Fair This Week', 'Rotary Club Penny Sale'. In Littleton, the local VFW put a big flag over the road with a big banner that said "Welcome Home Troops", when the troops came home from Desert Storm. They have been doing that in a responsible manner, and this year the Highway Department decided that it was going to start enforcing a rule that they had in effect that required these communities to get permission from them to do that. They have been acting responsibly and I see no reason why the Highway Department needs to waste

their time and the taxpayers money enforcing a problem that doesn't exit.

Floor amendment adopted.

Ordered to third reading.

### TAKEN OFF THE TABLE

Senator Russman moved to have SB 342 an act relative to resisting arrest or detention taken off the table.

Adopted.

**SB 342**, an act relative to resisting arrest or detention. Judiciary committee. Inexpedient to Legislate. Senator Roberge for the committee.

**SENATOR RUSSMAN:** We have a floor amendment coming around which Senator Roberge and Senator Colantuono and myself worked on in terms of trying to clarify the resisting arrest statute. We have changed it basically as you can see, one word to physically interfere and then we added a sentence that says "verbal protestations alone shall not constitute arrest of detention". I think that that is a reasonable clarification of the statute and perhaps a slight limiting of the statute in terms of letting people get into some discussion before they are just hauled off to jail, so-to-speak. It is a fair representation of what would improve the statute.

### SUBSTITUTE MOTION

Senator Russman moved ought to pass for inexpedient to legislate.

Adopted.

**SENATOR RUSSMAN:** I would simply ask that the Senate act favorably on the Roberge floor amendment. It does clarify the statute as I indicated.

Senator Roberge offered a floor amendment.

**5129L**

### Floor Amendment to SB 342

Amend RSA 642:2 as inserted by section 1 of the bill by replacing it with the following:

642:2 Resisting Arrest or Detention. A person is guilty of a misdemeanor when he knowingly or purposely **physically** interferes with a person recognized to be a law enforcement official seeking to effect an arrest or detention of himself or another regardless of whether there is a legal basis for the arrest. **Verbal protestations alone shall not constitute resisting arrest or detention.**

**AMENDED ANALYSIS**

This bill modifies the crime of resisting arrest or detention by providing that verbal protestations alone shall not constitute arrest or detention.

Floor amendment adopted.

SENATOR HUMPHREY: This question is for Senator Russman. I believe he is handling the bill. Can the Senator give us some characterization of what was said in the hearings? I mean was their opposition to this?

SENATOR RUSSMAN: Well the original bill was much different than what you see before you here. It changed quite a bit. That is why the committee originally did not care for it, because it changed quite a bit, that whole statute of what resisting arrest was really all about. We felt that the people should have or at least be able to speak in terms of whether or not or at least question the police officer, namely 'why are you taking me into custody?', without that being evidence of resisting arrest. Obviously, if he or she is calling the police officer and hitting him at the same time, then it can be. So we put verbal protestations alone, and once it gets beyond that then they certainly can be used.

SENATOR HUMPHREY: Thank you.

SENATOR DUPONT: Senator Russman, I guess I am just a little bit unclear about this. Have we had anyone from the law enforcement community comment on this, because as you know, there is a question about verbal protestations taking different forms and it can be making references to somebody's heritage in a very derogatory manner, as well as, there is such a thing as verbal abuse. I know that officers are subjected to that all the time. Is this going to cause legal questions on judgement calls or will it resolve legal questions on judgement calls?

SENATOR RUSSMAN: Verbal protestations alone, if there is anything more than that, in otherwords, if there is anything physical along with that, then they can be used as evidence. In otherwords, you can actually say what the fellow was saying, but if he simply says 'I am not going to jail, you so and so and so and so, I am not going to jail for nothing' and that is all that he says, that is not evidence of resisting arrest, but if he says 'okay you are coming with me' and he starts pulling away, clearly, that is physical, just the active action of pulling his arm away is sufficient to bring that within it.

SENATOR DUPONT: Thank you.

Ordered to third reading.

### TAKEN OFF THE TABLE

Senator Currier moved to have SB 432-FN relative to motorcycle noise level limits and imposing fines and penalties for violations of those limits taken off the table.

Adopted.

**SB 432-FN**, relative to motorcycle noise level limits and imposing fines and penalties for violations of those limits. Transportation committee. Inexpedient to Legislate. Senator Hollingworth for the committee.

**SENATOR CURRIER:** Mr. President, I rise to offer a substitute motion of ought to pass to further offer a floor amendment that was drafted by Senator Hollingworth and myself, which is a compromise on the bill in terms of the decibel level, the noise levels on motorcycles.

### SUBSTITUTE MOTION

Senator Currier moved ought to pass for inexpedient to legislate.

**SENATOR HUMPHREY:** To what extent is this going to force people with . . . how many people are going to be affected to the extent that they will have to stop operating their motorcycles or is the alternative somehow to modify the motorcycles or what?

**SENATOR CURRIER:** Senator Humphrey, the purpose of this legislation is to put into law some teeth in terms of enforcement on the decibel levels of the guy with the motorcycle. Right now, the only reference to decibel levels which we had numerous people testify that there is a significant problem on the seacoast area and in the southern part of the state, and especially on long hot summer nights, as opposed to long hot winter nights, like in this Senate Chamber. The bill puts some teeth into the motorcycle enforcement laws. Right now the only way that it is being enforced in isolated cases where a defective equipment tag is issued to a motorcycle that is suspected of having a loud decibel level. The current level, as I understand it, in inspection station rules and regulations is .90. The original bill called for moving it down. We found out in testimony in the hearing that the marine safety had one decibel meter for the whole damn state, so if that is telling you anything.

**SENATOR HUMPHREY:** Were there any groups or individuals in opposition?

**SENATOR CURRIER:** The people who appeared in opposition are in favor of this amendment because it addresses fairly the decibel level of current motorcycles being produced in today's market.

SENATOR HUMPHREY: So your answer is, is that most of the opponents would support this amendment?

SENATOR CURRIER: This is a compromise condition bill.

SENATOR RUSSMAN: Senator Currier, are you aware that the state police and other police departments already have a mechanism to cite people for having, you know, no baffles in their exhaust pipes, and this is just one more way for the police to intentionally harass segments of the motorcycle public?

SENATOR CURRIER: Senator, no, I am not aware of that, but you have just pointed that out to me.

SENATOR RUSSMAN: Well I mean that you are not aware that there is already a statutory reference already for them to cite people for removal of baffles in their tail pipe?

SENATOR CURRIER: Well I know that not having baffles is a violation.

SENATOR DUPONT: Well just a couple of points. Twenty inches from the exhaust pipes, and most people don't stick their heads down to measure the noise on something 20" from the end of the exhaust pipe. So is there some technical reason why you wouldn't stand back as a normal person would with their head up in the air and not 20" from the end of a hot exhaust pipe to take the measurement?

SENATOR CURRIER: I can't understand 40" or 30" or 140". My understanding is, there are some national standards that are applied to the detection of decibel levels at certain levels in terms of how that level is projected, you know, to the home that the motorcycle is driving by.

SENATOR DUPONT: Still, would we care what the noise is like 20" from the end of the exhaust pipe when nobody ever has their head down there? Would this bill require Senator Russman to put mufflers on his Harley?

SENATOR CURRIER: Yes, I believe that it would. Actually, this amendment is in fact, a courtesy to other Senators and other Representatives who came before the committee. The committee felt very strongly that we shouldn't be dealing with this area, but in courtesy to House and Senate members, we have decided to go along with the compromise.

SENATOR HOLLINGWORTH: What I would like to say is that when this bill came in, the testimony came in that in rules, they had changed the levels for decibels. Again, we go back to what rules do.

But they had changed the level down to 82, so when they killed my bill or were about to kill my bill, they discovered that when they opened a new crate of motorcycles coming in, that the decibel level on those new motorcycles coming in when they were out of the crate, was 106. So if you had the 82 that they passed in rules for decibels, these could not pass inspection. So all of a sudden my bill became very interesting to the motorcycle people. So they asked me if it could be used as a tool and I said yes, as long as they could guarantee me that by going ahead with putting this decibel of 106, that there was also going to be some level at which people operating motorcycles, they could be considered. So they, Doug Patch, the motorcycle people, the lobbyist for the big ones, what are those called, Rick, you know, and the other ones from Japan or wherever they come from. But they all went together over to a place across town here and they did, Senator Dupont, I think, they didn't put their ear down there, but I think that they did use some mechanism by which they tested it and they came up with the numbers and came back with this amendment and said, "Senator Hollingworth, will you concur?" and I said, "Yes, but promise me that if when I get back to Hampton Beach this summer and my police come down and say that my legislation caused havoc, that you will address that," and they guaranteed me that they would. So this bill really is the combination of many people being involved.

SENATOR RUSSMAN: Senator Hollingworth, do you know if this takes into consideration, you said that they had new motorcycles that they uncrated and they were 106. We all know that technology is improving everyday and every year as far as making these things quieter and quieter, but what about the motorcycles that are three or four or five or ten years old, they are going to be held to the same standard under that and what are all of those people going to have to do?

SENATOR HOLLINGWORTH: They would have been under a worse standard if what had been left in rules at 82. This was a determination not by me, I was not there when they did this testing. The testing was done by the motorcycle people themselves and they determined that this would be a good number. I don't think that they felt that you could go any higher.

SENATOR RUSSMAN: Senator Hollingworth, are you saying that if this piece of legislation is killed, you are saying that it is still a standard of 82 that the rules have made which we know is impossible to meet, because brand new motorcycles are at a 106?

SENATOR HOLLINGWORTH: Right. That is exactly what I am trying to say and could I have a ride on yours, please?

SENATOR RUSSMAN: If that is an impossible standard to meet under the old one and we know that very likely a number of motorcycles probably won't be able to meet this new one, does this seem to be the appropriate thing to do?

SENATOR HOLLINGWORTH: I heard testimony from or at least this was what I was told by the motorcycle people, I can't say testimony . . . What they told me is 106 would be fine for everybody.

Question is on the substitute motion of Ought to Pass.

Motion of ought to pass is adopted.

SENATOR CURRIER: I move the floor amendment.

Senator Currier offered a floor amendment.

**5105L**

### **Amendment to SB 432-FN**

Amend the title of the bill by replacing it with the following:

#### **AN ACT**

relative to motorcycle noise level limits.

Amend the bill by replacing all after the enacting clause with the following:

1 New Section; Motorcycle Noise Levels. Amend RSA 266 by inserting after section 59 the following new section:

266:59-a Motorcycle Noise Levels.

I. No person shall operate a motorcycle which has a measured noise level of more than 106 decibels on the decibel meter when measured 20 inches from the exhaust pipe at a 45 degree angle while the engine is operating at 3500 revolutions per minute.

II. No person shall pass for the purposes of the inspection required by RSA 266:1 any motorcycle which has a measured noise level of more than 106 decibels on the decibel meter when measured 20 inches from the exhaust pipe at a 45 degree angle while the engine is operating at 3500 revolutions per minute.

III. Any person who violates the provisions of this section shall be guilty of a violation.

2 Effective Date. This act shall take effect July 1, 1992.

### **AMENDED ANALYSIS**

This bill sets motorcycle noise level limits at a level not higher than 106 decibels under certain operating conditions. Any person who violates these limits shall be guilty of a violation.

A division is requested.



Yeas 12

Nays 7

Floor amendment is adopted.

Referred to Economic Development committee (Rule #24).

Recess.

Out of recess.

### RESOLUTION

Senator Delahunty moved that the Rules of the Senate be so far suspended as to allow all bills to be placed on third reading and final passage, all titles be the same as adopted, and that they be passed at the present time.

Adopted.

### ANNOUNCEMENTS

SENATOR FRASER (Rule #44): Mr. President, I would be remiss if I didn't thank some people in this body. I had the privilege of Chairing an AD HOC committee, studying the rape laws over the past several months. I got a lot of credit for it, but obviously, you know all I do is moderate the meetings, but people that serve from this body that were on that committee should be recognized and that would be, Senator Eleanor Podles, Senator Mary Nelson, Senator Beverly Hollingworth, and Senator Tom Colantuono. They did a superb job. All three of the bills that came out of that committee have been passed and have been sent on to the House. I just wanted to acknowledge their help and support during the course of the proceedings. Thank you.

SENATOR DUPONT: Senator, I am sure that's appreciated. There were a couple of pieces of legislation before us today that were very, very difficult legislation that some of us that have been around here for a long time have been involved with. SB 453 which was sponsored by Senator Russman, which dealt with involuntary commitment procedures was another one that I know many of us remember from years past, the debate and the dialogue over that particular issue. I think the body and the members of the committees that worked on both of these bills, certainly ought to be recognized for the good work that they did. If there are no other announcements, the Chair would like to wish you all a relaxing week off, for those who are going to take a week off. I know that some of us are going to be back on duty next week, but certainly hope that you all have an opportunity to have some time to yourself and get the blood pressure back down to where it should be and do some things that will get us all in shape for the crush that comes after we come back.

**LATE SESSION**

Recess

Senator Hough in the Chair

**RECONSIDERATION**

Senator Dupont moved, having voted in the prevailing side, moved reconsideration on SB 300 an act reapportioning the New Hampshire congressional districts. Internal Affairs committee.

Adopted.

**SB 300**, an act reapportioning the New Hampshire congressional districts. Internal Affairs committee. Ought to Pass. Senator Disnard for the committee.

**SENATOR DUPONT:** I will have a floor amendment which should be passed out at the present time. The bill is on second reading and open to amendment, so I stand for the purpose of offering the amendment and would like to speak to the amendment.

**SENATOR HOUGH (In the Chair):** Please continue, Senator.

**SENATOR DUPONT:** Thank you. This is a little bit of New Hampshire history that all of us that are familiar with it find a great deal of interest in it. New Hampshire changes to our voting districts have to be approved or pre-cleared by the U.S. Attorney General's Department of Justice before they can be put into effect. There are ten New Hampshire towns that are subject to this requirement because less than 50 percent of the voting age population were registered or actually voted at certain key elections in the 1960's. I think Senator Bass, if I am not mistaken, brought in some literacy cards at some point, and we actually had communities that had literacy tests for people before they could vote. So as a result of that, we were declared to be not in compliance with federal regulations. So when we get through our redistricting process, we have to get approval by the Justice Department. During the primary vote, a number of communities took votes on redrawing the ward lines in those communities, the statute that deals with changing city charters says that those changes must be put into effect either by the vote of the aldermen, or selectmen, or aldermen, or city councilors, or at the start of the next municipal year. So the situation that we face is that we have to, in April, at some point in April, send for pre-clearance. And until we have the ward lines, we can't ship down to the Justice Department our pre-clearance request. We had a discussion with the Secretary of State, Bill Gardner about this today, and have drafted an amendment that basically puts the redrawing of those ward lines

that are into effect upon passage. So this needs to be done, it helps move the process along. The communities have all done their part and what we need to do is just in case they don't have the opportunity to vote them into place before we get ready to do pre-clearance, this was thought to be the easiest way to accomplish that. So that was the purpose for reconsideration. The amendment basically accomplishes putting those ward lines into place.

Senator Dupont offered a floor amendment.

**5114L**

### **Floor Amendment to SB 300**

Amend the bill by replacing section 3 with the following:

3 Application of City Charter Amendments to November, 1992 State and Congressional Elections. Notwithstanding any provision of RSA 49-B:6, IV(b) all city charter amendments shall become effective no later than the effective date of this act for the purpose of conducting the state general election to choose federal, state, and county officers to be held in November, 1992.

4 Effective Date. This act shall take effect upon its passage.

### **AMENDED ANALYSIS**

This bill redraws the districts for electing representatives to the United States House of Representatives by moving the towns of Sanbornton, Tilton, Northfield, Canterbury, Loudon, and Chichester from the first to the second congressional district.

The bill also adds an application section for city charter amendments which are adopted prior to the November, 1992 election, which provides that such amendments shall become effective no later than the effective date of the act for the purpose of conducting the state general election to be held in November, 1992.

Floor amendment adopted.

Ordered to third reading.

### **RECONSIDERATION**

Senator Podles moved, having voted in the prevailing side, moved reconsideration on SB 457-FN an act relative to sale of beverages by beverage manufacturers. Ways and Means committee.

SENATOR PODLES: Mr. President, we have some new information on the bill and we would like to reconsider it.

Adopted.

**SB 457-FN**, an act relative to sale of beverages by beverage manufacturers. Ways and Means committee. Ought to Pass.

Senator Cohen moved to have SB 457-FN an act relative to sale of beverages by beverage manufacturers laid on the table.

Adopted.

### **LAI D ON THE TABLE**

SB 457-FN an act relative to sale of beverages by beverage manufacturers is laid on the table.

Recess.

Senator Dupont in the Chair.

### **REPORT OF COMMITTEE ON ENROLLED BILLS**

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled Senate Bill:

**SB 193**, relative to limits on motorboat speeds.

### **RESOLUTION**

Senator Delahunty moved that the Senate be in recess until March 5, 1992 at 1:00 p.m. for the sole purpose of introducing legislation, referring bills to committee, scheduling hearings, and receiving Enrolled Bills Reports.

Adopted.

Senator Currier moved that we recess until Thursday, March 5, 1992 at 1:00 p.m.

Adopted.

### **Third Reading and Final Passage**

**SB 300**, an act reapportioning the New Hampshire congressional districts.

**SB 322**, an act limiting the advertising expenses of public utilities which may be included in the calculation of rates and establishing a long range energy policy committee.

**SB 324**, an act establishing a commission on the family.

**SB 327**, an act establishing a committee to study the effects of substance abuse on health care costs of the state.

**SB 329**, an act authorizing the New Hampshire Housing Finance Authority to assist tenants when a manufactured housing park is undergoing condominium conversion.

**SB 342**, an act relative to resisting arrest or detention.

**SB 355**, an act requiring that deposits for the purchase of manufactured housing be held in escrow accounts.

**SB 363**, an act relative to health insurance coverage of autologous bone marrow transplants.

**HB 379-FN**, an act relative to advertising devices within highway rights-of-way.

**SB 381**, relative to interest on escrow accounts.

**SB 384**, an act relative to foreclosures and sale of mortgaged property.

**SB 405-FN**, an act relative to driver attitude training for repeat and habitual offenders.

**SB 412-FN-L**, an act relative to signage by nonprofit organizations in zoned commercial or industrial areas.

**SB 417-FN**, relative to underground storage tanks.

**SB 428-FN**, an act designating segments of the Connecticut River for the rivers management program.

**SB 437**, relative to the New Hampshire Dental Service Corporation and relative to the premium tax on health maintenance organizations.

**SB 440-FN**, an act establishing a statewide water conservation program.

**SB 445**, relative to fuel sold to vessels at state piers.

**SB 453-FN**, an act relative to involuntary commitment procedures.

**SB 459**, limiting increases in electric rates.

**SB 462-FN**, an act relative to optional allowances and beneficiaries under the New Hampshire retirement system.

**SB 467-FN-LOCAL**, an act changing the interest rates on delinquent property taxes and subsequent taxes and requiring a certificate of tax payment prior to the moving of a building or structure.

**SB 470-FN-LOCAL**, an act relative to using electronic monitoring devices and community supervision as an alternative to prison.

**SB 471-FN**, an act authorizing child day-care to certain AFDC clients.

**HB 1100-FN-L**, an act establishing a housing assistance trust fund.

**HB 1328-FN**, an act relative to the fiscal responsibilities of the county commissioners and the county convention for capital expenditures in Rockingham county.

Senator Currier moved that we recess.

Adopted.

Recess.

Out of Recess.

### HOUSE MESSAGE

The House of Representatives has passed the following Bills with the following titles, in the passage which it asks the concurrence of the Senate.

### INTRODUCTION OF HOUSE BILLS

Senator Delahunty offered the following Resolution:

**RESOLVED**, that in accordance with the list in the possession of the Clerk, House Bills numbered 61 through HCR 1 shall be by this resolution read a first and second time by the therein listed titles, and referred to the therein designated committees.

Adopted.

### First and Second Reading and Referral

**HB 61-FN**, repealing the prospective repeal of the victims' assistance fund and making technical corrections in the distribution of penalty assessment funds. Judiciary committee.

**HB 317-FN**, relative to a minimum service retirement allowance for group II members and making an appropriation for administrative costs. Insurance committee.

**HB 404-FN**, requiring the introduction of legislation in the 1993 session relative to the joint board of engineers, architects, land surveyors, foresters and natural scientists. Executive Departments committee.

**HB 527-FN-A**, licensing speech-language pathologists and making an appropriation therefor. Executive Departments.

**HB 545**, reapportioning the executive council districts. Internal Affairs committee.

**HB 569**, to reapportion county commissioner districts. Internal Affairs committee.

**HB 693-FN**, relative to disclosure of tax records related to investigations by the attorney general and relative to forfeiture of items seized in connection with controlled drug offenses. Judiciary committee.

**HB 1050-FN-L**, limiting outdoor advertising devices and increasing permit fees for maintaining outdoor advertising devices. Transportation committee.

**HB 1052**, relative to the appointment of the executive director of the fish and game department and allowing the governor to make more frequent appointments to the fish and game commission. Wildlife and Recreation committee.

**HB 1101-FN**, relative to certain liquor license fees and expanding certain prohibitions regarding competing interest in liquor and wine sales. Ways and Means committee.

**HB 1104-FN**, relative to capitalization of the affordable housing fund. Public Affairs committee.

**HB 1107-L**, requiring that tax collectors provide property owners with notices of arrearages for property taxes. Public Affairs committee.

**HB 1113**, relative to compatible and conflicting liquor and beverage licenses. Ways and Means committee.

**HB 1115**, changing obsolete references within the liquor laws. Ways and Means committee.

**HB 1116**, relative to certain liquor and beverage licenses. Ways and Means committee.

**HB 1117**, relative to the minimum age requirements for liquor license applicants, relative to employing minors in licensed establishments, and relative to games and amusements on the premises of on-sale licensees. Ways and Means committee.

**HB 1121-FN**, authorizing contracting for the operation of the impaired pharmacist program and funding the program from annual license renewal fees. Executive Departments committee.

**HB 1122**, establishing a committee to study all areas of apple cider standards, licensing and labeling. Public Affairs committee.

**HB 1124-L**, allowing a town to apply certain rental welfare assistance payments to certain amounts owed to a town for the assisted persons landlord's delinquent water, sewer, electricity or tax payments and relative to interest rates on security deposits. Public Affairs committee.

**HB 1136**, relative to regulation of small loans. Banks committee.

**HB 1137**, relative to nondepository first mortgage bankers and brokers. Banks committee.

**HB 1139**, relative to persons licensed to offer second mortgage home loans. Banks committee.

**HB 1154**, relative to an exemption for the sale of hypodermic syringes for school use. Public Institutions, Health and Human Services committee.

**HB 1156**, changing the annual rate of interest on judgments and business transactions. Banks committee.

**HB 1161**, relative to the composition of the wetlands board. Executive Departments committee.

**HB 1163**, relative to a public employee's right to require that a non-public session under the right-to-know law be open to the public. Judiciary committee.

**HB 1172**, increasing the amount of the homestead right. Public Affairs committee.

**HB 1173**, allowing a beneficial interest owner of a trust owning real estate to qualify for property tax exemptions and credits and allowing the veterans' exemption for service in the Gulf War. Public Affairs committee.

**HB 1175**, creating a committee to study medical liability insurance in New Hampshire. Insurance committee.

**HB 1182-FN**, authorizing the division of human services to establish a system to recoup child support payments made in error, clarifying confidentiality of certain information and allowing the division to close certain cases. Public Institutions, Health and Human Services committee.

**HB 1190**, creating a committee to study ways to clarify the relationship between the legislative bodies and governing bodies in towns, school districts and village districts operating under the town meeting form of government with respect to budgetary matters. Public Affairs committee.

**HB 1192**, relative to remedies under the whistleblowers' protection act. Judiciary committee.

**HB 1196**, clarifying the amount to be paid from the firemen's relief fund in the event of a claim. Insurance committee.

**HB 1201-FN**, relative to the license fee structure for domestic wine manufacturers. Ways and Means committee.

**HB 1219-FN**, relative to recovery of assistance under the medicaid program. Public Institutions, Health and Human Services committee.

**HB 1220-FN-L**, changing the method for calculating stumpage values for purposes of assessing the yield tax on timber. Ways and Means committee.



**HB 1228-FN-L**, allowing a city, town or village district to grant waivers from the requirement of connection to the public sewer systems for properties with adequate alternative sewage disposal systems. Environment committee.

**HB 1240**, establishing a committee to study criteria and propose legislation concerning the secession of a portion of a municipality. Public Affairs committee.

**HB 1256-FN-A**, requiring the department of transportation to study the United States Route 3 and New Hampshire Route 11 transportation corridor. Transportation committee.

**HB 1261-FN-A**, requiring the department of transportation to conduct a study relative to the construction of certain portions of U.S. Route 3. Transportation committee.

**HB 1268**, relative to inspection and permit fees set by local legislative bodies. Public Affairs committee.

**HB 1278-FN-L**, permitting towns to make bylaws for refuse disposal in specifically-designated bags and altering district court procedure for levying fines against bylaws violators. Environment committee.

**HB 1282-FN**, relative to the transfer of registration between owned and leased vehicles. Transportation committee.

**HB 1283-FN**, authorizing the human rights commission to award compensatory damages, levy administrative fines and award attorney's fees. Judiciary committee.

**HB 1286-FN-L**, allowing antique motor vehicles other than antique motorcycles to be registered at a prorated rate. Transportation committee.

**HB 1297**, establishing a committee to study the issue of protecting personal information. Judiciary committee.

**HB 1305**, permitting the carrying and selling of antique gun canes. Wildlife and Recreation committee.

**HB 1308**, relative to technical changes to the municipal charter laws. Public Affairs committee.

**HB 1316-FN**, relative to hearing before the board of nursing. Executive Departments committee.

**HB 1320**, extending the time for recording a foreclosure deed and affidavit after a foreclosure sale when such recording is prevented by order or stay of any court or law or the United States Bankruptcy Code. Judiciary committee.

**HB 1327-FN**, prohibiting the state or any of its political subdivisions from requiring public assistance applicants to cross picket lines to apply for jobs. Public Affairs committee.

**HB 1332**, removing the prohibition on use or possession of tobacco products by minors. Public Institutions, Health and Human Services committee.

**HB 1341-FN-L**, clarifying the terms "subsequent tax" and "registered" and "certified" mail for purposes of certain property tax laws. Public Affairs committee.

**HB 1350**, revising the laws that require a prescription to purchase a hypodermic needle. Public Institutions, Health and Human Services committee.

**HB 1351**, creating a committee to review the laws governing tax-exempt property and to study the concept of and criteria for payment in lieu of taxes by tax-exempt properties in response to HBI 2 of the 1991 session. Public Affairs committee.

**HB 1357**, establishing a committee to study the concept of in-home care as an alternative to institutionalized care. Public Institutions, Health and Human Services committee.

**HB 1359**, relative to the confidentiality of police personnel files in criminal cases. Judiciary committee.

**HB 1382**, requiring all sellers of property to fully disclose information relative to private water supplies and septic and sewage disposal systems. Environment committee.

**HB 1395-FN-A**, relative to soil conservation districts and making a supplemental appropriation therefor. Finance committee.

**HB 1396-FN**, authorizing municipalities to incur debt in the form of bonds guaranteed by the state of New Hampshire to assist municipalities, towns, cities, counties or districts to close landfills and to clean up hazardous waste sites. Environment committee.

**HB 1400-FN**, relative to the comprehensive shoreland protection act. Environment committee.

**HB 1429**, relative to accounting for land use change tax funds. Public Affairs committee.

**HB 1434**, requiring employers advertising for replacement workers during a strike to state such in any advertisement. Public Affairs committee.

**HB 1436**, relative to septic setbacks and terrain alteration permits. Environment committee.

**HB 1440-FN-L**, relative to preparation of master jury lists by the department of safety from drivers' licenses lists. Judiciary committee.

**HB 1451-FN**, relative to the transportation of pupils living within a certain distance from the school to which they are assigned. Education committee.

**HB 1452-FN-L**, allowing the county treasurer to use call bonds and lines of credit as financial management tools. Banks committee.

**HB 1455-FN**, relative to motor vehicle laws, including suspension of wholesale motor vehicle dealer's registration, hanging disability placards, and other technical changes. Transportation committee.

**HB 1465-L**, relative to the taxation and transfer of restricted land. Public Affairs committee.

**HB 1471-FN**, changing the penalties for theft of timber from another person's land or for altering the mark of any mill log belonging to another person. Judiciary committee.

**HB 1474-FN-A**, relative to taxability of real estate transfers. Ways and Means committee.

**HB 1480-FN**, requiring persons who default on court appearances for motor vehicle offenses to pay witness fees for law enforcement officers. Transportation committee.

**HB 1492-A**, eliminating the capital appropriation for the demolition of the Walker building. Capital Budget committee.

**HCR 21**, urging the U.S. Congress to adopt uniform recycling product labeling standards based on standards developed by the Northeast Recycling Council. Environment committee.

### HOUSE MESSAGE

The House of Representatives concurs with the Senate in its amendments to the following entitled Bills sent down from the Senate:

**HB 1100-FN-L** - establishing a housing assistance trust fund.

**SB 372**, authorizing industrial development financing for the Manchester Airport.

### HOUSE MESSAGE

The House of Representatives has passed the following Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

### INTRODUCTION OF HOUSE BILLS

Senator Delahunty offered the following Resolution:

**RESOLVED**, that in accordance with the list in the possession of the Clerk, House Bills numbered 1108 through HCR 24 shall be by

this resolution read a first and second time by the therein listed titles, and referred to the therein designated committees.

Adopted.

**HB 1108**, authorizing valid living wills executed in other states to be recognized in New Hampshire. Judiciary committee.

**HB 1118**, relative to membership of the permanent committee for barrier-free design. Public Affairs committee.

**HB 1135**, relative to liquidation under the supervision of the bank commissioner. Banks committee.

**HB 1141**, relative to retail installment sales of motor vehicles. Banks committee.

**HB 1164**, relative to seaplanes operating on bodies of water in New Hampshire. Transportation committee.

**HB 1166**, changing the definition of "commercial boat" for the purposes of boat registration and granting a muffler exemption for antique and classic boats. Transportation committee.

**HB 1167**, relative to the police commission in the town of Conway. Public Affairs committee.

**HB 1178**, extending the appropriation for the Manchester district court facility. Capital Budget committee.

**HB 1191**, prohibiting insurance companies from nonrenewing a homeowner's policy solely on the basis that a claim has been filed. Insurance committee.

**HB 1202**, permitting municipalities that have biennial municipal elections to submit charter changes for approval at biennial state elections. Public Affairs committee.

**HB 1207**, exempting hospice houses from certificate of need review. Public Institutions, Health and Human Services committee.

**HB 1209**, establishing a committee to study the real estate valuation and revaluation process. Public Affairs committee.

**HB 1213**, clarifying that notice of claim of paternity be filed prior to a mother's voluntarily relinquishing her rights pursuant to an adoption. Judiciary committee.

**HB 1214**, establishing a study committee to assess present enforcement of certain state environmental laws by environmental regulatory agencies of the state of New Hampshire. Environment committee.

**HB 1222-FN-L**, authorizing schools to modify authorized regional enrollment area (AREA) agreements. Education committee.

**HB 1251**, relative to the observance of Memorial Day by school districts. Public Affairs committee.

**HB 1287-L**, enabling certain municipalities to issue tax lien redemption notes and relative to the transfer of tax liens. Public Affairs committee.

**HB 1295**, prohibiting discrimination in insurance policies against elected or appointed officials. Insurance committee.

**HB 1296**, removing a prohibition on certain card games and permitting commercial motor vehicle racetrack facilities to make certain beverage sales. Ways and Means committee.

**HB 1326**, requiring that service of process at a defendant's abode comply with court rules. Judiciary committee.

**HB 1329-FN-L**, specifying the time for the municipal treasurer to make payments of annual budget funds to the village district. Public Affairs committee.

**HB 1330**, prohibiting certain credit card practices involving providers of travel services. Banks committee.

**HB 1345**, allowing off-sale beer and wine licensees to advertise by signs and posters. Ways and Means committee.

**HB 1361**, establishing a committee to study state motor vehicle fleet management. Capital Budget committee.

**HB 1374**, establishing a task force on women at risk for alcohol and other drug abuse during pregnancy. Public Institutions, Health and Human Services committee.

**HB 1388**, imposing a civil penalty in any proceeding in which a rule of a manufactured housing park owner is deemed unreasonable. Public Affairs committee.

**HB 1448**, relative to the loyalty oath for teachers. Education committee.

**HB 1478-FN-L**, restructuring the Pease development authority. Economic Development committee.

**HB 1491-FN-L**, requiring professional fundraisers for police, law enforcement and firefighters' associations to register with and be regulated by the department of justice, increasing the amount of the registration fee, solicitation fee and bond, and making technical amendments to the registration law. Judiciary committee.

**HCR 24**, urging the President to establish a commission to review access to current health care systems and to adopt unified access to

health care in this country and urging Congress to enact recommendations of the commission. Public Institutions, Health and Human Services committee.

### REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled Senate Bill:

**SB 372**, authorizing industrial development financing for the Manchester Airport.

### HOUSE MESSAGE

The House of Representatives has passed the following Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

### INTRODUCTION OF HOUSE BILLS

Senator Delahunty offered the following Resolution:

**RESOLVED**, that in accordance with the list in the possession of the Clerk, House Bills numbered 1054 through HCR 28 shall be by this resolution read a first and second time by the therein listed titles, and referred to the therein designated committees.

Adopted.

**HB 1054-FN**, relative to the industrial development authority. Economic Development committee.

**HB 1105**, relative to disclosure of campaign contributions by candidates for local and school district elections. Public Affairs committee.

**HB 1123**, establishing procedures for representation in small claims court and authorizing persons to appear for corporations, partnerships, and trusts in district court. Judiciary committee.

**HB 1128**, classifying certain misdemeanors as either class A or class B. Judiciary committee.

**HB 1143-FN-A**, increasing the per-brand registration fee for commercial feed and establishing an agricultural product and scale testing fund. Public Affairs committee.

**HB 1183-FN**, relative to the importation, propagation and possession of aquatic and wildlife species. Wildlife and Recreation committee.

**HB 1187**, making it first degree assault to knowingly or recklessly cause serious bodily injury to a person under 13 years of age. Judiciary committee.

**HB 1211**, permitting public employees to file an unfair labor practice complaint after a certain time without exhausting administrative remedies. Executive Departments committee.

**HB 1216**, allowing certain funds to be transferred to the new women's dormitory account at the New Hampshire technical institute. Education Department.

**HB 1217-L**, requiring a peace officer to give written notice of certain charges to the county attorney. Judiciary committee.

**HB 1227-A**, decreasing the bonding authorized relative to the Manchester access ramp project. Capital Budget committee.

**HB 1238-FN**, authorizing the reconstruction of the Route I-89 exits 18 and 20 interchanges in Lebanon. Capital Budget committee.

**HB 1252-FN**, creating exceptions from and reciprocity for state water laboratory certification, clarifying the use of fees for certifying state water laboratories, and changing the special account into a special continuously appropriated revolving fund account. Environment committee.

**HB 1262**, relative to the rulemaking authority of the bank commissioner. Banks committee.

**HB 1293**, reducing the penalty for adultery from a misdemeanor to a violation. Judiciary committee.

**HB 1298**, allowing any municipal fire or police department, or independent emergency service, to record incoming and outgoing central dispatch and emergency telephone calls. Executive Departments committee.

**HB 1323-L**, forming a study committee to develop a survey to be used by the department of education to collect and compile information regarding major school construction projects. Education Department committee.

**HB 1344-L**, requiring the house environment and agriculture and the senate environment committees to review the laws relative to solid waste management. Environment committee.

**HB 1347-A**, designating money for the planning and design of a regional vocational education center in Milford. Education committee.

**HB 1353**, relative to civil recovery of damages for shoplifting. Judiciary committee.

**HB 1372-FN**, placing restrictions on the sale and disposal of manganese, zinc carbon, oxide and nickel-cadmium batteries. Environment committee.

**HB 1390-FN**, providing a 5 percent cost of living adjustment for teacher members of the retirement system and providing a 10 percent cost of living adjustment for teachers retired prior to July 1, 1957. Insurance committee.

**HB 1399-FN**, changing the name of the board of examiners of psychologists to the board of examiners of psychology and mental health practice, expanding such board, and certifying mental health counselors. Executive Departments committee.

**HB 1401**, requiring the mandates task force to study the impact of the development of the prison facility in the city of Laconia. Economic Development committee.

**HB 1407**, repealing laws relative to abortion. Judiciary committee.

**HB 1414-FN-A**, relative to the medicaid plan to enhance the funding of services for children and families and making an appropriation therefor. Public Institutions, Health and Human Services committee.

**HB 1439**, instituting a motor vehicle emissions inspection program and requiring a study of diesel and other vehicles. Environment committee.

**HB 1453-FN**, establishing a study committee to review existing shellfish waters monitoring and closure procedures. Wildlife and Recreation committee.

**HB 1462-FN**, establishing a committee to examine all aspects of parole eligibility. Judiciary committee.

**HB 1485-FN**, relative to children and family services, requiring the division for children and youth services to use reasonable efforts to preserve families while providing services designed to protect children. Public Institutions, Health and Human Services committee.

**HB 1494-FN-L**, implementing the recommendations of the New Hampshire supreme court long-range planning task force regarding the judicial branch. Judiciary committee.

**HB 1496-FN-L**, relative to the funding methodology of the retirement system. Insurance committee.

**HB 1498-FN**, relative to drug forfeiture. Judiciary committee.

**HB 1499-FN**, relative to inter-track wagering and the conduct of simulcast racing. Ways and Means committee.

**HCR 20**, urging the federal government to establish a post office in the town of Lee. Public Affairs committee.



**HCR 26**, urging the New Hampshire legislature and the New Hampshire Congressional delegation to discourage certain Air Force testing of F-16 fighter aircraft in New Hampshire airspace. Internal Affairs committee.

**HCR 28**, urging the federal government to restore full funding for prescription drugs for veterans with service-related disabilities. Public Institutions, Health and Human Services committee.

### REPORT OF COMMITTEE ON ENROLLED BILLS

The committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and Senate Bills:

**HB 379**, relative to advertising devices within highway rights-of-way.

**HB 1370**, to provide rotating 4-year county commissioner terms in Rockingham County.

**SB 172**, relative to enhanced family care facilities and making an appropriation therefor.

**SB 220**, relative to the district court's jurisdiction over certain children and making an appropriation therefor.

Senator Delahunty moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, and that when we adjourn, we adjourn until Thursday, March 5, 1992 at 10:00 a.m.

Adopted.

Adjournment.

*March 5, 1992*

The Senate met at 10:00 a.m.

A quorum was present.

The prayer was offered by the Rev. David P. Jones, Senate Guest Chaplain.

*Good Morning. You have lots of work to do today, I know that. I just want to remind you that many people hold you in their prayers, and not so much because of the opinions that you have, but because of who you are. Let us pray.*

*Whether oh Lord, Senate Bill 406 and 309 remain gathering dust on the table, and no matter what happens to the Economic Development committees specially wrapped package brought here today for the Senate to open, and whether or not SB 455 is indeed inexpedient*

*to legislate. Help each of us to remember, that in our lives you will never table us, and in your opinion, we are never inexpedient to you. Thanks for that.* *Amen.*

Senator Fraser led the Pledge of Allegiance.

### INTRODUCTION OF GUEST

### NOTICE OF RECONSIDERATION

Senator McLane, having voted on the prevailing side served notice of reconsideration on SB 437 relative to the New Hampshire Dental Service Corporation.

Recess.

Out of recess.

### MOTION TO VACATE

Senator Fraser moved to have HB 1320 extending the time of recording a foreclosure deed and affidavit after a foreclosure sale when such recording is prevented by order or stay of any court or law of the United States Bankruptcy code from the Judiciary committee to the Banks committee.

Adopted.

### COMMITTEE REPORTS

**SB 367**, an act authorizing the department of resources and economic development to sell the Nansen ski jump facility if no interest exists in the private sector to maintain and operate the facility. Capital Budget committee. Ought to Pass. Senator Oleson for the committee.

**SENATOR OLESON:** As it was just stated SB 367 has to do with giving the Department of DRED the authority to sell the facility which is known as the Nansen Ski Club which is located in reality in Milan. I thought they had that right anyway seeing that, back in the late 30's the state of New Hampshire built this jump and it cost them some \$75,000. Then here again, about two terms ago, they also raised another \$67,000 to renovate this. What has really happened is that this national ski club, which incidentally, which is suppose to be the oldest ski organization in the United States of America, and of course it is named after the arctic explorer by the name of Nansen. What has happened, this has more or less been run by volunteers like other organizations. But a certain person came off the jump and injured themselves and they sued the directors of the Nansen Ski Club even though they have always put the time in voluntarily and worked for nothing. Therefore, right now nobody wants to take a

chance and be a director of the Nansen Ski Club because of this, which is included in their activities. So in reality, to give them the directions, and they don't want to resume the responsibilities and put it up for sale. So if any one of you people want to maybe go up there and join an ongoing organization, they might pick this up for little or nothing. This is the background and I hope that you go along with the bill as stated by the Capital Budget committee.

Adopted.

Ordered to third reading.

**SB 429**, an act relative to selecting engineers, architects, and surveyors by state agencies. Capital Budget committee. Ought to Pass with Amendment. Senator Fraser for the committee.

**5193L**

### **Amendment to SB 429**

Amend the bill by replacing section 1 with the following:

1 Requirements for Selecting Engineers, Architects, and Surveyors. RSA 21-I:22 is repealed and reenacted to read as follows:

21-I:22 Selection of Engineers, Architects, and Surveyors.

I. As used in this section:

(a) "Agency" means any executive department, commission, board, institution, bureau, office, or other agency of state government, by whatever named called, that uses, disburses, expends, or receives any state funds, but excluding the university system of New Hampshire.

(b) "Engineering, architectural, and surveying services" includes those professional services of an engineering, architectural or surveying nature, as well as incidental services that members of these professions and those in their employ may logically and justifiably perform.

(c) "Members of these professions" means any individual, firm, partnership, corporation, association or other legal entity permitted by law to practice in this state the professions of engineering, architecture, or surveying.

II. The general court hereby declares that it shall be the policy of the state and its agencies to negotiate contracts for engineering, architectural, and surveying services on the basis of demonstrated competence and qualifications for the type of professional services required, and at fair and reasonable prices.

III. All state agencies, when seeking professional services, shall publish a request for proposals or, when a definite scope of work is not yet defined, a request for qualifications for each project for which engineering, architectural, or surveying services are to be procured.

IV. Each agency engaging these professional services shall prepare a description of its procedures for procurement of architectural, engineering or surveying services. These descriptions shall be distributed to interested professionals subject to the provisions of this section. The agency, for each proposed project, shall publish a request for qualifications (RFQ) or request for proposals (RFP) and shall review and consider the qualifications after receiving qualifications or proposals. The agency shall then establish a short list of not less than 3 firms. The agency shall, for purposes of negotiation, arrange the firms deemed to be best qualified in order of preference as determined in accordance with the prescribed procedures of the agency. An interview may be held with the short list firms or, in the case of selection based on an RFQ and where the scope of work has been further defined, detailed technical proposals may be requested.

V. The agency shall negotiate a contract with the highest qualified firm for architectural, engineering, or surveying services at compensation which the agency determines is fair and reasonable to the state. In making such determination, the agency shall take into account the estimated value, scope, complexity, and professional nature of the services to be rendered.

VI. Should the agency be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price determined to be fair and reasonable to the state, negotiations with that firm should be formally terminated. The agency should then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the agency should terminate negotiations. The agency should then undertake negotiations with the third most qualified firm.

VII. Should the agency be unable to negotiate a satisfactory contract with any of the selected firms, the agency shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this section until an agreement is reached.

VIII. Once negotiations have been complete and the agency has had its contract approved by the governor and council, all proposals submitted for a project shall become available for public review.

SENATOR FRASER: Mr. President, what this bill does is to relax the requirements and allow for all architects and engineers and surveyors who have been qualified to make bids under the current system in the Department of Transportation for instance, everybody submits their qualifications, and from that group when a job becomes available there is a certain segment of that community that is pre-selected from the Department of Transportation who sends the specs out to them. Under the terms of this bill, all those who have

been pre-qualified would also be invited to make a bid. We think it's good legislation and we urge its adoption.

Committee amendment adopted.

Ordered to third reading.

**SB 438-FN**, an act relative to the department of transportation equipment acquisition revolving fund and making an appropriation therefor and relative to redistributing certain funds within the department of transportation. Capital Budget committee. Ought to Pass with Amendment. Senator Roberge for the committee.

**5308L**

**Amendment to SB 438-FN-A**

Amend the title of the bill by replacing it with the following:

**AN ACT**

relative to the department of transportation  
equipment inventory fund and making  
an appropriation therefor.

Amend the bill by replacing section 1 with the following:

1 New Section; Equipment Inventory Fund. Amend RSA 228 by inserting after section 24-a the following new section:

228:24-b Equipment Inventory Fund. There is hereby established an equipment inventory fund not to exceed \$30,000,000, which sum is hereby authorized as a revolving fund comprised of funds in the highway fund that are not otherwise appropriated. The commissioner of transportation may purchase, through the division of property and plant management, such equipment as may be necessary for the operation of department's motor vehicle and equipment fleet. The commissioner may rent or lease vehicles and equipment from the equipment inventory to all departments and institutions of the state, political subdivisions of the state and agencies of the federal government. He may assess a fair and equitable charge with respect to the rental or lease of vehicles and equipment sufficient to defray all administrative, transportation, storage, maintenance, amortization, replacement and other costs incurred by the department in administering this account sufficient to fully reimburse the equipment inventory fund. The revenue from the sale of vehicles or equipment owned by the equipment inventory fund shall be deposited back into the equipment inventory fund.

228:24-c Replacement of Vehicles and Equipment. The commissioner of transportation is directed to prepare an equipment acquisition plan each biennium and present such plan to the legislative capital budget overview committee for approval. To perpetuate the

inventory, the commissioner of transportation, with the consent of the legislative capital budget overview committee may purchase vehicles and equipment identified in the plan from available funds in the equipment inventory fund.

Amend the bill by deleting sections 5-40 and renumbering section 41 to read as 5.

### AMENDED ANALYSIS

This bill establishes an equipment inventory fund in the division of property and plant management, department of transportation.

The bill appropriates funds to the department of transportation for the purchase of vehicles and equipment. The appropriation shall be bonded and the payment of principal and interest shall be charged against the highway fund.

SENATOR ROBERGE: SB 438 does four very distinct things. It institutes a self-funding motorized equipment replacement program for the Department of Transportation. It institutes a continuous equipment acquisition plan reviewed by the Senate, it institutes a command of control mechanism for the equipment acquisition program through the legislative Capital Budget Overview committee and it assures the Department of Transportation can respond to adverse weather conditions to keep our roads safe during winter driving conditions. We move ought to pass as amended.

SENATOR COLANTUONO: Senator Hough, just to be clear for the records, can you explain to the members how the \$7,000,000 that we are appropriating will be paid back? In other words, will there be any net effect on the highway fund?

SENATOR HOUGH: The \$7,000,000, initially, will be general obligation bonds paid out of the highway fund, however, in the operating budget as you know, the monies which use to be for equipment replacement will now have a specific line by PAU for lease of state equipment, and that money will be transferred into the revolving account as revenue, if you will, to offset the obligation.

Committee amendment adopted.

Ordered to third reading.

**SB 446-A**, an act authorizing construction of exit 10 on the Spaulding turnpike from bonds previously authorized. Capital Budget committee. Ought to Pass with Amendment. Senator Shaheen for the committee.

5306L

**Amendment to SB 446-A**

Amend the title of the bill by replacing it with the following:

**AN ACT**

authorizing construction of exit 10 on the Spaulding  
turnpike from bonds previously authorized and  
changing the classification of the Salmon  
Falls road in Rochester and  
Somersworth to class II.

Amend the bill by inserting after section 2 the following and re-numbering the original section 3 to read as 4:

3 New Section; Road Classification Changed. Amend RSA 230 by inserting after section 7 the following new section:

230:7-a Class IV and V Highway Changed to Class II. The class IV and V Salmon Falls Road running from the intersection of New Hampshire route 125 in Rochester approximately 6.99 miles to the New Hampshire-Maine state line in Somersworth shall be henceforth classified as a class II highway. Unimproved portions of said highway shall remain eligible for state aid allocated to class IV and V highways.

**AMENDED ANALYSIS**

This bill authorizes the department of transportation to construct exit 10 on the Spaulding turnpike. The funding for the project will be accomplished under RSA 237-A, turnpike system revenue bonds.

This bill changes the classification of the Salmon Falls Road in Rochester and Somersworth from class IV and V to class II.

SENATOR SHAHEEN: SB 446 would authorize \$3,000,000 for the construction of exit 10 on the Spaulding Turnpike. This has already been in the works. Last year we appropriated money to begin the studies. The actual expenditure of the money would be contingent upon the outcome of the study of the east-west highway, and where the exit is going to come into the Spaulding Turnpike. Actual construction of exit 10 would not begin until we know where that is going to come out. If it does come out where proposed exit 10 is going to be, that would be this exit 10. I move ought to pass.

Committee amendment adopted.

Ordered to third reading.

Recess.

Senator Delahunty in the Chair.

**SB 302-FN-A**, an act establishing a nonprofit corporation to guide the economic development of New Hampshire and making an appropriation therefor. Economic Development committee. Inexpedient to Legislate. Senator W. King for the committee.

**SENATOR W. KING:** This is one of the bills that will be in the Senate economic development package. It is a very important piece that we will talk about during that discussion of the package itself, but because we don't need to pass it twice this bill is being reported out on the floor as inexpedient to legislate and we will discuss with you in the package itself.

Recess.

Out of recess.

**SENATOR DUPONT:** I may be crossing the line a little bit, so perhaps a rule #44 would have been more appropriate. At some point you can gavel me down and tell me I should have asked for a rule #44. As many of the Senators know, yesterday was a difficult day around here. We all had some moments of high anxiety over trying to move the rest of the bills that are before us through the process. I myself, had to go around this morning giving my apologies to a few members of this body for some comments that I made to one of our standing committees yesterday. I didn't want to get started today without at least thanking the Senate for their tolerance of not only the economic development committee, but myself, for perhaps some of the force that I brought to bear on the process during the last few days. I wanted to also commend the Senate before we started. This is the last time that we will have a Senate package on economic development coming before us. I want to commend the Senate for the manner in which they've commended themselves as we have worked on this process. It has been difficult and I know there are some concerns in some of the policy committees about the way that the economic development acted on some of the legislation that came out of the other policy committees. What I want for a moment, just to say that I think that we have demonstrated our ability to put aside the party considerations, the political theology, to work on moving the state of New Hampshire out of this mess. I think that it is important that I say that, because I think that as we look to Washington we have come to recognize that the only way that we are going to move New Hampshire and our country forward economically, is that if our political leaders are able to stop fighting the political wars and start fighting the economic wars. I say this because I don't care who in this body gets credit for what we have done. That may be a foolish thing for me to say politically, but the fact of the matter is, I think that all of you, to the credit of this Senate, we have



not let the republican party or the democratic party or the conservative philosophy or the liberal philosophy to get in the way of doing the necessary things that we all saw important to do for us to move this process forward. I say this because for a lot of the people of New Hampshire today, as we sit here at the very institutions that they have depended on during their lives to support them, are no longer in place. Long standing employment relationships are no longer existing for many of our employees. We have record business closings, bankruptcies that are a national record, families are being split-up over economic issues. In fact, we have families whose wage earners are moving to other states leaving their families behind to seek employment. All of our lives are being re-shaped by what is going on in New Hampshire at the present time. I think that we have an opportunity as politicians and I don't think that is a bad word, to rebuild our own standing in our communities and certainly the people who we represent, to try to fill some of that institutional void that exist out there. To do that, we have to show an understanding of our state's problems and be willing to recognize that things aren't real great in New Hampshire right now. We have to recognize that we need to understand that we need to be sincere. And as I said earlier, put aside all of those things that normally prevent us from having the vision and the willingness to try and address some of the tough issues. This package that is going to come before you today, is certainly not perfect. I know there are some problems that have been mentioned by a few members of the Senate, but I would hope that you would consider all of the things that are going on outside of this building, the sense of urgency that many of our constituents have when you look at this package, because quite frankly, for many of our citizens of this state, we are the last hope, because everything else has failed them. So I appreciate the graciousness of the Senate in allowing me to give these few remarks. I am going to stay down on the floor and engage in hopefully, meaningful dialogue with all of you. I just want to again, tell you that this has been a very rewarding experience, I think, for all of us, and I am not ashamed to stand here and say that I am proud of the way the Senate has worked, particularly on these issues. I think that we have demonstrated that the bulk of the leadership that has been brought to bear on the economic development issues from within the political structure in the state of New Hampshire has come out of this body and it has been with support and the cooperation of all of the Senate, not just those that are on Economic Development that have allowed us to move as far forward as we have on these issues. With that I will sit down, Mr. President, and be recognized later on to speak on some of the other bills.

Committee report of inexpedient to legislate is adopted.

**SB 304-FN-A**, an act making an appropriation for the purposes of bio-tech research. Economic Development committee. Ought to Pass with Amendment. Senator W. King for the committee.

**5278L**

**Amendment to SB 304-FN-A**

Amend the title of the bill by replacing it with the following:

**AN ACT**

relative to business assistance and  
institutional arrangements.

Amend the bill by replacing all after the enacting clause with the following:

1 Statement of Purpose Regarding Business Assistance and Institutional Arrangements.

I. The general court finds that public policies are urgently required to restore the strength and sustain the growth of the economy in order to increase the prosperity and enhance the opportunities of the people of New Hampshire. The general court finds that such public policies must be pursued in a coherent, consistent and comprehensive manner both to meet the immediate challenges and to serve the future interests of the state and its people. The general court also finds that measures to further capital formation, regulatory reform, business assistance, infrastructure development and strategic planning are legitimate, necessary and timely priorities for legislative initiatives. Therefore, the general court has addressed these aspects of public policy in 4 acts which together represent a program to revive and sustain economic growth in New Hampshire.

II. The general court also finds that the authority and resources of state and municipal government should encourage and support the establishment and expansion of commercial and industrial enterprise. The general court finds that state government should direct a share of its resources to support research and development of products and techniques with promising commercial and industrial applications. Therefore, the general court establishes programs to promote and support research and development.

III. The general court also finds that the appointment of a federal funds coordinator would enable the state and its municipalities to take full advantage of the opportunities presented by the federal government.

2 Bio-Tech Research. The industrial research center at the University of New Hampshire may enter into a research partnership with Dartmouth College, with a focus on bio-tech research and development.

3 Funding. Section 2 of this act shall be funded from the New Hampshire economic development fund established in RSA 12-A:2-e.

4 New Subdivision; Investors Assistance Act. Amend RSA 187-A by inserting after section 33 the following new subdivision:

### **Inventors Assistance Act**

187-A:34 Statement of Purposes. The general court recognizes the numerous benefits to the state's economic base from the establishment of businesses by inventors and the numerous benefits provided by inventors which include industrial diversification, broadening of the economic base, a great proliferation of jobs, providing financial benefits to our citizens through a greatly expanded tax base and new products and processes for the nation's consumers. It is estimated that 95 percent of all inventions are never authoritatively considered primarily because inventors are unfamiliar with the business environment or financial structure necessary for implementing their proposals. The general court therefore recognizes a need to encourage and assist inventors and, at the same time, to position this state as a leader in advanced and high technology and to foster a climate for those leaders of this state, the nation and the world.

187-A:35 Definitions. In this subdivision:

I. "Center" means the industrial research center at the university system of New Hampshire, Durham campus.

II. "Commercial stage" means the point at which the product has advanced beyond the theoretical and prototype stage and is capable of being manufactured or reduced to practice commercially.

III. "Committee" means the oversight committee established in RSA 187-A:32.

IV. "Inventor" means any person who perceives a new concept which may result in a product or patentable process.

V. "Person" means any individual, sole proprietor, partnership or corporation.

VI. "Product" means any device, technique or process.

VII. "Proposal" means a plan provided by the inventor which includes technical and descriptive information on the concept.

VIII. "Royalties" means all things of value received by an inventor in connection with the licensing, rental or sale of a product patented, in patent pending, or trademarked pursuant to federal law.

187-A:36 Program Established. A program to provide assistance to inventors shall be established at the center. The program shall be designed to:

I. Attract inventors from throughout this state, the nation and other countries and encourage them to submit their proposals for review and evaluation.

II. Provide assistance to inventors whose proposals are accepted which shall include patent searches, market analysis, product research and development, assistance in obtaining financing, business counseling, and any other assistance necessary to develop the product to the commercial stage which is not prohibited by the constitution or laws of this state. To protect both the state and the inventor, a disclosure document shall be on file with the U.S. Patent Office before the state will review a proposal.

III. Provide assistance to enable the manufacturing, marketing and distribution of the product.

187-A:37 Powers and Duties. The administrative head, with the approval of the committee, shall:

I. Enter into contracts on a competitive bid basis with public and private agencies, institutions, organizations and individuals for the purpose of providing assistance to and services for inventors as required by this subdivision.

II. Solicit the support and contributions of public and private agencies, organizations, institutions and individuals.

III. Receive and administer funds for the purpose of operating the inventors assistance program.

IV. Advertise and promote the inventors assistance program.

187-A:38 Proposals and Contracts.

I. The center shall charge a filing fee for \$100 for each proposal submitted for review and evaluation.

II. After review and evaluation, proposals shall be accepted or rejected for development under the inventors assistance program. The center shall not charge for any services to aid in the development of the product. Services may include patent searches, market analysis, product research and development, assistance in obtaining financing, including financing from private sources, and business counseling, if needed. The center shall receive a fee not to exceed an amount equal to 10 percent of all royalties from any product developed under the inventors assistance program for a period of 10 years from the first day after royalties are received from the commercial licensing, rental or sale of the product.

III. Before services to aid in the development of the product shall commence, the committee shall enter into a contract with the inventor which shall include:

(a) The services which the center will provide to aid in the development of the product.

(b) Any other services which the center will assist the inventor in obtaining and for which the inventor shall be liable pursuant to written consent.

(c) Authorization for the center to receive a fee not to exceed an amount equal to 10 percent of all royalties from the product for a period of 10 years.

(d) An agreement from the inventor that all products developed under the program shall be researched, developed, manufactured, packaged and distributed from this state to the extent that it is economically feasible, provided that a fee not to exceed an amount equal to 10 percent of all royalties from products developed under this program, wherever manufactured, shall accrue to this state pursuant to the provisions of this subdivision.

187-A:39 Inventors' Assistance Fund. There is hereby established in the office of the state treasurer a fund to be known as the inventors' assistance fund. The center is authorized to accept public sector and private sector grants, gifts or donations of any kind for the purpose of funding programs associated with the promotion of international trade. Such grants, gifts and donations shall be deposited in the inventors' assistance fund and may be expended by the administrative head of the center, with the approval of the committee, to accomplish the purposes of RSA 187-A:34-40. The moneys in this fund shall be nonlapsing and shall be continually appropriated to the center.

187-A:40 Guidelines. The administrative head of the center, with the approval of the committee, shall establish guidelines for the administration of this subdivision.

5 Funding. Any start-up costs required by section 4 of this act shall be funded from the New Hampshire economic development fund established in RSA 12-A:2-e.

6 New Hampshire Economic Development Commission; Reporting Date Extended; Duties. Amend 1991, 337:5 to read as follows:

337:5 Duties and Responsibilities; Reports. The commission shall study and review all aspects of public policy affecting the long-term economic development of the state of New Hampshire. The commission shall prepare a long-term strategic plan for economic development which shall include recommendations for necessary legislative and regulatory action. **The commission shall also make a recommendation on the advisability of establishing a nonprofit corporation to guide the economic development of New Hampshire.** The commission shall submit an interim report of its findings and recommendations to the governor and general court no later than

December 1, 1991. The long-term strategic plan shall be completed no later than [June 30, 1992] **September 1, 1992**, and submitted to the governor and general court at that time.

7 Name Change; Added Duty. Amend RSA 4-C:4 to read as follows:

4-C:4 [Administrator of Federal-State Financial Information] **Coordinator of Federal Funds.**

I. It is the intent of the general court that the position of [administrator of federal-state financial information] **coordinator of federal funds** be created in the office of state planning to inventory, **coordinate** and monitor the **availability and** use of federal funds in New Hampshire. The general court intends that the executive and legislative branches of state government shall be aware of all federal funds received and used in New Hampshire.

II. There is established in the office of state planning a position to be known as [federal-state financial information administrator] **coordinator of federal funds**. The duties of the [administrator] **coordinator** shall include, but not be limited to, the following:

(a) **Seek out federal programs and funds which may be available to New Hampshire, notify the appropriate state department, municipality or other agency and coordinate the application process. The coordinator shall give priority to federal programs related to economic development and credit.**

(b) **Monitor the efforts of state departments, municipalities, and other agencies to apply for and secure federal funds.**

(c) **Advise state departments, municipalities, and other agencies within the state of the availability of federal surplus equipment. The coordinator is authorized to contract for services to procure federal surplus equipment on behalf of New Hampshire departments, municipalities and other agencies within the state.**

[[a)] (d) **To maintain a data base, to which the general court shall have access, concerning all federal funds available to all state departments, municipalities, and other agencies within the state.**

[[b)] (e) **To report on all such federal funds coming into the state of New Hampshire, whether to public or private agencies, to the director of the office of state planning who shall annually issue such report to the public.**

8 Effective Date.

I. Section 6 of this act shall take effect upon its passage.

II. The remainder of this act shall take effect 60 days after its passage.

### AMENDED ANALYSIS

I. Section 1 of this bill is a general purpose statement.

II. Sections 2 and 3 of this bill authorize the industrial research center at the University of New Hampshire to enter into a research partnership with Dartmouth College, with a focus on bio-tech research and development. The partnership is funded from the New Hampshire economic development fund.

III. Sections 4 and 5 of this bill establish an inventor assistance program to provide assistance to inventors. Inventors would submit an application with a fee of \$100 to the industrial research center of the university of New Hampshire at Durham for review and evaluation. If the proposal is accepted, there would be a contract between the research center and the inventor authorizing the research center to receive a fee not to exceed 10 percent of all royalties from the product for 10 years and establishing that the research center will aid in the funding of the product. The program is funded from the New Hampshire economic development fund.

IV. Section 6 of the bill extends the reporting date for the New Hampshire economic development commission's long-term strategic plan from June 30, 1992, to September 1, 1992. It requires the commission to include in its plan a recommendation on the advisability of establishing a nonprofit corporation to guide the economic development of New Hampshire.

V. Section 7 of this bill changes the name of the administrator of federal-state financial information to the coordinator of federal funds. The coordinator is to actively seek out federal programs, funds and equipment which may be available to New Hampshire, notify the appropriate state department, municipality or agency and coordinate the application process. Under this bill, the coordinator is to place an emphasis on those federal programs related to economic development and credit.

SENATOR W. KING: SB 304, originally the bill was strictly dealing with Senator Dupont's idea of biotechnical arrangement between UNH and Dartmouth is now the vehicle which contains that, but also contains a number of other issues. The amendment to that is found on page four in your calendar and it deals with business assistance and institutional arrangements. It has four sections to it. The first section, is the section on biotechnic arrangement between Dartmouth and UNH. The second section, section four and five of the

bill, establish an inventor assistance program. There is no funding for this, but we are hopeful that we can access some funding for it through other mechanisms. That inventor assistance program will be run by the industrial research center which we established in the last session of the legislature. The third part of the bill, section six, extends the reporting day for the New Hampshire Economic Development commission which we established in the last session. It also directs that commission to offer recommendations on the establishment of a nonprofit corporation charged with guiding economic development in the state of New Hampshire. In other words, it encompasses the issues brought to bear in SB 302 which we just disposed of. The last section creates a federal funds coordinator who will be responsible for seeking out all federal funds that are available to the state of New Hampshire, accessing those funds and making sure that he or she lights a fire under the appropriate government official so that he or she applies for those funds when that is appropriate. It also authorizes the coordinator to contract for services to prepare surplus federal equipment on behalf of the state municipalities and other agencies within the state. This is the first of the Senate Economic Development packages and we urge your passage.

SENATOR NELSON: Senator W. King, as you know Nashua is deeply involved in economic development both with the business community and the public sector. How many jobs do you think a program like this would generate when you were discussing this and when you were putting this money in here, did you discuss the jobs that it would generate and perhaps in what area of the state?

SENATOR W. KING: Senator Nelson, first of all, I think that you need to understand that it was the sense of the Economic Development committee as it has been over the past year and half, that the government's role is not to create jobs, government's role is to create the atmosphere in which the private sector can flourish and create those jobs. This Senate Economic Development package, this bill and the other three that we will discuss today, all deal with trying to create the atmosphere so that the private sector can create those jobs. The intent is to try and make an atmosphere where jobs will be generated statewide. For example, the inventor assistance program will be of great use to brilliant unemployed entrepreneurs that Senator Pressly often talks about in the Nashua area. They will be able to approach the industrial research center with an idea and get funding for the development of that idea and keep those jobs right in the Nashua area where Senator Pressly is so concerned about them being.

SENATOR NELSON: Senator King, let me re-state the question. None of us want government interfering in business, but surely,



somewhere along the line in your discussion with the people who appeared before your committee and in addressing biotechnology in the state of which our mayor has been involved in since before his election, surely in that discussion, the issue was raised that if we began to do research, it should generate some jobs in the state of New Hampshire. My question is, in your research in preparing this legislation, number one, was there discussion of how many jobs perhaps, might be generated, and was there talk of dialogue between other economic development commissions that have already been set-up throughout the state?

SENATOR W. KING: Senator Nelson, there was great deal of discussion about that. It is impossible to put a number on the amount of jobs that could be created. I know you discussed this with me on many occasions about your concern about the job prospects for folks in your district. It is a concern of the Economic Development committee that we create the atmosphere for that to occur. The other issues that you talked about in a more specific way will be addressed in the other three bills that we will be dealing with and if the question still remains at the end of that process, then I would advise you to ask that question again and we will point that out.

SENATOR NELSON: On page nine of the calendar, you talk about the New Hampshire Economic Development commission. As you know there is an Economic Development commission in Nashua, so I am wondering what is the mechanism to allow a group that has already been formed, has been working, has paid money for an outside consultant, for a report that Senator Pressly has been working on: What is the mechanism to allow this so we don't keep re-inventing the wheel, if in fact, in other places in this state this is already being done?

SENATOR W. KING: First of all, there will be a discussion of a matching grants program to assist those other economic development commissions. It is my understanding, that the economic development commissions that exist, are soliciting input from other economic development commissions within the Mount Auburn Associates report on the Industrial Development Authority. There is a good deal of discussion of creating secondary markets for loans that are made by commissions such as the one that you have. Those things will be discussed in the bills that we will get to, the other three bills that we will be dealing with, but it is the intent, I believe, of the Senate Economic Development committee, and, I believe, also of the New Hampshire Economic Development Commission to work as closely as possible at creating good strong ties between those commissions and local economic development commissions.

SENATOR NELSON: Thank you, Senator King, for those reassuring words.

SENATOR PRESSLY: Senator W. King, is there anything in this legislation or the ones that we are expecting later this morning, that can make the rest of us feel comfortable that this money is not going to stay routed in this one location and that there will actually be a mechanism, either on a percentage or some numerical guarantee that this money will in fact be distributed throughout the state, that it is not going to just go and create, you know, a very exotic, glamorous academic atmosphere that is not going to get to the person on the street?

SENATOR W. KING: Senator Pressly, when you say just one location, I assume that you are talking about the partnership between Dartmouth and UNH?

SENATOR PRESSLY: Yes. What assurance do we have that this will get to the inventor? All of the Senators in this room probably have inventors.

SENATOR W. KING: Oh, I misunderstood you. You're asking specifically about the inventor assistance program, correct?

SENATOR PRESSLY: Well, or the totality of it. What can we take our local entrepreneurs, our inventors, that is available to them quickly and easily through this program?

SENATOR W. KING: Well in a general way, and if your question is not answered with the next three bills which deal more specifically with those issues, in a general way, I would say that what you can tell them is that we have placed an emphasis where money is appropriated providing capital into the marketplace for businesses all over the state of New Hampshire. And that we have placed an emphasis on creating cutting edge technologies so that the private sector can utilize those technologies anywhere in the state of New Hampshire with the inventor assistance program specifically. Inventors from the Nashua area, for example, would be able to go and fill out an application to the industrial research center for assistance with their invention. That would mean that the invention was not produced at the industrial research center; it would mean that it was produced where the inventor wanted to have it produced, where in your case it would be in Nashua. So the spin-offs from these things will occur, we believe, statewide and produce high growth and high wage jobs all over the state of New Hampshire. If you have further questions about that as we go through the other three bills, then I would invite you to ask them again so that we can be more specific in discussing specific aspects of the bills.

SENATOR PRESSLY: Senator King, if you would be so kind, I think that all of us are very concerned that this money be distributed. We understand that you have designated locations and entities that the money will be filtered through, if you would be so kind in the course of this day, this is very important legislation, that you would highlight that, so that we have some assurance that this is going to be distributed throughout the state.

SENATOR W. KING: I would be glad to do that.

SENATOR PODLES: Senator King, I have a question on the coordinator. Do I understand it correctly that it creates a new position of coordinator?

SENATOR W. KING: I would defer to Senator Dupont.

SENATOR DUPONT: Senator Podles, it does not. In fact there exists a person in position that is already over at state planning that does a similar function to this. The problem with what is going on over there now, is there is no accountability. I will just give you an example. They have a responsibility to notify state agencies of the fact that there is a grant available to a state agency. But no one bothers to check if the grant has been applied for, or if they were successful, or if there is any follow up to see if that in fact we are maximizing the use of federal funds. It is in here because there is a significant amount of federal funds that are available for economical development and we ought to take advantage of those. I don't think until we get somebody focused that can also find programs, but also make sure that a state agency that doesn't want to be bothered with the paperwork, turns themselves around and gets recognized that they are not doing the work, that they are not making sure that they apply for these grants. That is why we have done this remodeling. The second piece of this deals with surplus property. There was a good article in one of the state's newspapers that talked about a community that has been taking advantage of surplus property that is available. Right now there is nobody in state government looking to see if there is any benefit to any of the property that the federal government, particularly in the equipment area that could be helpful to the state and save some of local communities some money. We used to have that function done in state government and I have had several communities express an interest. All of that gets funneled through the state, so that is why this is important.

SENATOR PODLES: So, Senator, I can assume that position is already funded and according to methodology here, the annual salary for that person would be \$62,800 and that is already there?

SENATOR DUPONT: Senator, there is a position already over in state planning.

SENATOR PODLES: It talks here about the New Hampshire economic development fund. Could you tell me how much is in that fund?

SENATOR DUPONT: Yes. Last year we appropriated \$5,000,000 for that fund and gave DRED a committee under which it could spend that money. At the present time, I believe, there is approximately \$1,000,000 left in the fund. That money went to set up, I can be real specific, the Industrial Research Center at UNH received \$1,000,000, the Small Business Investment Corporation which is located in Manchester received, I believe, a couple of million dollars out of that. The International Trade Function received some monies, and DRED received some monies for overhead. So we have used it for business activities that were adopted by the legislature last session. That is what we intended to do.

SENATOR PODLES: The distribution of those funds, does that go through a certain committee?

SENATOR DUPONT: It goes through a committee that is made up of the Speaker, the Senate President and Representatives from the Governors Office. The whole reason behind the fund was that DRED, who is in charge of the program side of economic development, shouldn't have to wait if they see a program that makes sense for them to do it. It was entrepreneurial. It was said to DRED, if there is a marketing program or if there is a specific program that looks like it would be good for the state of New Hampshire, here is some money, this is a fund that allows you to go out and do some things, and in fact, the fund would be replenished as some of these agencies could go.

SENATOR PODLES: Thank you.

SENATOR COLANTUONO: Senator King, Senator Dupont answered most of my questions that I had about the funding of this, but I am just concerned that the only funding that I see is the economic development fund which I understand now has only \$1,000,000 left in it, and then \$100 filing fee for each proposal and then 10 percent royalties. There is a lot of work to be done under this bill over there, and royalties don't come in until the invention gets approved and patented and marketed and starts making a profit. Is this organization going to be coming back to us next year, next biennium and so forth, and asking for general fund appropriations to continue their work pending an insufficient revenues from the royalties program or can you guarantee us that this is going to be totally self funding forever?

SENATOR W. KING: I can't guarantee that, obviously in the first few years, Senator Colantuono, but I can assure you that there are a

number of things that are happening within the context of the industrial research center, including what they call 'seeking out angels'. In other words, putting together, I figured you might like that, that is putting together people who have money with people who have good ideas. I think that we are doing everything that we can to minimize the amount of public dollars that have to be used for these kinds of things and to maximize through all of the package, maximize what those public dollars levy.

SENATOR DUPONT: I want to assure my colleagues from Nashua that one of the things that has happened as a result of the economic development commission and the work of this package is that we have sat down with the various people from Nashua. I, in fact, appointed someone from Nashua to be on the commission, because I was sensitive to the fact that there is a significant amount of economic activity that is generated in the Nashua area. In fact a couple of weeks ago I sat down with (Yvonne Nastasy) and a group from Nashua, including the former mayor where we specifically discussed pieces of this package that they support. They came in for the purpose of letting us know how strongly they feel about some of the things that the Senate had been doing and that has occurred with many of the business groups around the state, not just Nashua. I want you to know that there is a lot of support that exists out there for what the Senate has been doing.

Committee amendment adopted.

Ordered to third reading.

Senator Heath opposed to SB 304.

**SB 305-FN**, an act relative to a coordinator of federal funds. Economic Development committee. Inexpedient to Legislate. Senator Bass for the committee.

SENATOR BASS: Mr. President, the content of SB 305 is in the amendment to SB 304 the committee urges your adoption of the report of inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

**SB 332**, an act authorizing a municipality to issue bonds to pay the costs of the cleanup of superfund hazardous waste sites. Economic Development committee. Ought to Pass. Senator Shaheen for the committee.

SENATOR SHAHEEN: The Senate has seen 332 before. This is the bill that would allow the state to provide guarantee for bonds to municipalities to cleanup super fund sites. It is a critical importance to about six or seven communities in this state with a total bill of

over \$100,000,000 for the cleanup of those sites. We are still working on some of the concerns relative to this bill with the communities involved and so we would like to move ought to pass, but we would then like to table the bill so that we can continue to work on it.

SENATOR NELSON: Senator Shaheen, this came out of another committee first?

SENATOR SHAHEEN: It did. It came from Environment.

SENATOR NELSON: What was the recommendation on it?

SENATOR SHAHEEN: Ought to pass.

SENATOR NELSON: There were questions raised on the floor, I believe, when it came out of that committee. Do I hear you today suggesting that you still have been unable to answer those concerns, so you want to lay it on the table?

SENATOR SHAHEEN: That is right. There are some very specific issues surrounding the package that we are waiting from for a decision from bond council on. We can't go any further until we get that information.

SENATOR NELSON: How long is that going to take?

SENATOR SHAHEEN: Well, I am hoping to have it within a couple of weeks.

Senator Dupont moved to have SB 332 an act authorizing a municipality to issue bonds to pay the costs of the cleanup of superfund hazardous waste sites laid on the table.

Adopted.

### LAID ON THE TABLE

**SB 332**, an act authorizing a municipality to issue bonds to pay the costs of the cleanup of superfund hazardous waste sites is laid on the table.

**SB 336**, an act providing an exemption for the issuance of securities by certain established investment companies. Economic Development committee. Inexpedient to Legislate. Senator Bass for the committee.

SENATOR BASS: The subject matter of SB 336 is contained in 339 which is the next bill that we are going to consider. The committee urges your support of the committee report of inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

**SB 339**, an act establishing a committee to study the impact of New Hampshire's product liability laws on manufacturers in New Hamp-

shire. Economic Development committee. Ought to Pass with Amendment. Senator Fraser for the committee.

5283L

### **Amendment to SB 339**

Amend the title of the bill by replacing it with the following:

#### **AN ACT**

relative to regulatory reform.

Amend the bill by replacing all after the enacting clause with the following:

#### **1 Statement of Purpose Regarding Regulatory Reform.**

I. The general court finds that public policies are urgently required to restore the strength and sustain the growth of the economy in order to increase the prosperity and enhance the opportunities of the people of New Hampshire. The general court finds that such public policies must be pursued in a coherent, consistent and comprehensive manner both to meet the immediate challenges and to serve the future interests of the state and its people. The general court also finds that measures to further capital formation, regulatory reform, business assistance, infrastructure development and strategic planning are legitimate, necessary and timely priorities for legislative initiatives. Therefore, the general court has addressed these aspects of public policy in 4 acts which together represent a program to revive and sustain economic growth in New Hampshire.

II. The general court finds that the rules and regulations governing the conduct of commerce and industry, together with their administration and enforcement, bear significantly on the condition and performance of the economy. The general court recognizes that these rules and regulations and their administration and enforcement require constant review and timely revision in order to ensure that they remain compatible with and conducive to changing commercial practices and industrial techniques. The general court also finds that statutory and regulatory revision is necessary not only to facilitate the conduct of traditional business but also to encourage the establishment of innovative enterprises.

2 Division to Hear Corporate and Commercial Matters. The superior court shall, no later than November 1, 1992, present to the general court a plan to establish within the superior court a division to hear cases related to corporate and commercial matters. Such plan shall not create any new positions and shall not require expenditure of any additional funds.

3 New Subparagraph; Exemptions for Certain Established Investment Companies. Amend RSA 421-B:17, I by inserting after subparagraph (m) the following new subparagraph:

(n) Any security issued by an issuer registered as an open-end management investment company or unit investment trust under Section 8 of the Investment Company Act of 1940 if:

(1) The issuer is advised by an investment adviser that is a depository institution exempt from registration under the Investment Company Act of 1940 or that is currently registered as an investment adviser, and has been registered, or is affiliated with an adviser that has been registered, as an investment adviser under the Investment Advisers Act of 1940 for at least 5 years next preceding an offer or sale of a security claimed to be exempt under this paragraph, and:

(i) The adviser has acted, or is affiliated with an investment adviser that has acted, as investment adviser to one or more registered investment companies or unit investment trusts for at least 5 years next preceding an offer or sale of a security claimed to be exempt under this paragraph; or

(ii) The issuer has a sponsor that has at all time throughout the 5 years before an offer or sale of a security claimed to be exempt under this paragraph sponsored one or more registered investment companies or unit investment trusts, the aggregate total assets of which have exceeded \$100,000,000; and

(2) The secretary of state has received prior to any sale exempted herein:

(i) A notice of intention to sell or offer to sell which has been executed by the issuer which sets forth the name and address of the issuer and the title of the securities to be offered in this state; and

(ii) One copy of the prospectus and statement of additional information, if any; and

(iii) A filing fee pursuant to RSA 421-B:31, a separate notice and fee shall be required for each individual series or class of fund.

(3) In the event any offer or sale of a security of an open-end management company is to be made more than 12 months after the date on which the notice to claim the exemption was filed under this subparagraph, another notice and payment of the applicable fee shall be required for each individual series or class of the fund. For the purpose of this subparagraph, an investment adviser is affiliated with another investment adviser if it controls, is controlled by, or is under common control with the other investment adviser.



4 New Subparagraph; Fee Established. Amend RSA 421-B:31, I by inserting after subparagraph (g) the following new subparagraph:

(h) Fee for notice pursuant to RSA 421-B:17, I(n) \$1,000.

5 Section Heading Changed; Annual Financial Statements. Amend the section heading of RSA 400-A:36 to read as follows:

400-A:36 [Reports and Replies] **Annual Financial Statement.**

6 Annual Financial Statement Required. Amend RSA 400-A:36, I to read as follows:

I. Every insurance company doing business in this state shall, on or before March 1 each year, make and transmit to the commissioner a statement under oath of its president and secretary, in accordance with [blanks approved by him and following those accounting procedures and practices prescribed by] the National Association of Insurance Commissioners [Accounting Practices and Procedure Manual,] **Annual Statement Blank following the National Association of Insurance Commissioners Annual Statement Instructions and those accounting procedures and practices prescribed by the National Association of Insurance Commissioners Accounting Practices and Procedure Manual**, showing the amount of its capital stock, assets, liabilities, outstanding risks, premium notes, receipts, expenditures, losses, assessments, salaries and emoluments, and any other information calculated to fully disclose the condition and method of management of the company for the year ending the preceding December 31, which statement shall include the whole amount of premiums written during the preceding year for insurance on property, or risks located or persons resident in this state.

7 Prohibited Acts. RSA 400-A:37, I is repealed and reenacted to read as follows:

I. The commissioner or any of his examiners may conduct an examination of any company as often as the commissioner deems appropriate but shall at a minimum, conduct an examination of every insurer licensed in this state at least once every 5 years. In scheduling and determining the nature, scope and frequency of the examinations, the commissioner shall consider the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent Certified Public Accountants and other criteria as set forth in the Examiners' Handbook in effect and adopted by the National Association of Insurance Commissioners.

(a) Except as otherwise expressly provided, the commissioner shall examine each domestic insurer at least once every 5 years, and he shall annually examine, value, or cause to be valued the reserve liabilities, including loss adjustment expense reserves, of each domestic insurer. For the purpose of making the annual valuation of

the reserve liabilities for all outstanding life insurance policies and annuity and pure endowment contracts of domestic insurance companies, the commissioner may employ a competent actuary who shall make such valuation of a company's contractual obligations and the company's compliance with the law.

(b) For purposes of completing an examination of any company under this title, the commissioner may examine or investigate any person, or the business of any person, in so far as such examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the company.

(c) In lieu of an examination of any foreign or alien insurer licensed in this state, the commissioner may accept an examination report on the company as prepared by the insurance department for the company's state of domicile or port-of-entry state until January 1, 1994. Thereafter, such reports may only be accepted if:

(1) The insurance department was at the time of the examination accredited under the National Association of Insurance Commissioners' Financial Regulation Standards and Accreditation Program or

(2) The examination is performed under the supervision of an accredited insurance department or with the participation of one or more examiners who are employed by such an accredited state insurance department and who, after a review of the examination work papers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department.

8 Conduct of Examinations. RSA 400-A:37, III is repealed and reenacted to read as follows:

### III. Conduct of Examinations.

(a) Upon determining that an examination should be conducted, the commissioner or the commissioner's designee shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the Examiners' Handbook adopted by the National Association of Insurance Commissioners. The commissioner may also employ such other guidelines or procedures as the commissioner may deem appropriate.

(b) Every company or person from whom information is sought, its officers, directors and agents must provide to the examiners timely, convenient and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents and any or all computer or other recordings relating to the property, assets, business and affairs of the company being examined. The officers, directors, employees and agents of the company or person must fa-

cilitate the examination and aid in the examination so far as it is in their power to do so. The refusal of any company, by its officers, directors, employees or agents, to submit to examination or to comply with any reasonable written request of the examiners shall be grounds for suspension or refusal of, or nonrenewal of any license or authority held by the company to engage in an insurance or other business subject to the commissioner's jurisdiction.

(c) The commissioner or any of his examiners shall have the power to issue subpoenas, to administer oaths and to examine under oath any person as to any matter pertinent to the examination. Upon the failure or refusal of any person to obey a subpoena, the commissioner may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable as contempt of court.

(d) When making an examination under this title, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants or other professionals and specialists as examiners, the cost of which shall be borne by the company which is the subject of the examination.

(e) Nothing contained in this title shall be construed to limit the commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. Findings of fact and conclusions made pursuant to any examination shall be prima facie evidence in any legal or regulatory action.

(f) Nothing contained in this title shall be construed to limit the commissioner's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or company workpapers or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action which the commissioner may, in his discretion, deem appropriate.

9 Examination Report; Filing, Adoption, Publication and Use. RSA 400-A:37, IV is repealed and reenacted to read as follows:

IV.(a) No later than 60 days following completion of the examination, the examiner in charge shall file with the department a verified written report of examination under oath. Upon receipt of the verified report, the department shall transmit the report to the company examined, together with a notice which shall afford the company examined not more than 30 days to make a written submission or rebuttal with respect to any matters contained in the examination report.

(b) Within 30 days of the period allowed for the receipt of written submissions or rebuttals, the commissioner shall fully consider and review the report, together with any written submissions or rebuttals, and any relevant portions of the examiner's workpapers and enter an order:

(1) Adopting the examination report as filed or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, regulation or prior order of the commissioner, the commissioner may order the company to take any action the commissioner considers necessary and appropriate to cure such violation; or

(2) Rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation or information, and refiling as provided in subparagraph (a); or

(3) Calling for an investigatory hearing with no less than 20 days notice to the company for purposes of obtaining additional documentation, data, information and testimony.

(c)(1) Upon the adoption of the examination report, the commissioner shall continue to hold the content of the examination report as private and confidential information for a period of 20 days except to the extent provided in subparagraph (a). Thereafter, the commissioner may open the report for public inspection so long as no court of competent jurisdiction has stayed its publication.

(2) Nothing contained in this title shall prevent or be construed as prohibiting the commissioner from disclosing the content of an examination report, preliminary examination report or results, or any matter relating thereto, to the insurance department of this or any other state or country, or to law enforcement officials of this or any other state agency of the federal government at any time, so long as such agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this title.

(3) In the event the commissioner determines that regulatory action is appropriate as a result of any examination, he may initiate any proceedings or actions as provided by law.

(d) All working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the commissioner or any other person in the course of any examination made under this title must be given confidential treatment and are not subject to subpoena and may not be made public by the commissioner or any other person, except to the extent provided in subparagraph (c). Access may also be granted to the National Association of Insurance Commissioners. Such parties shall agree in writing prior

to receiving the information to provide to it the same confidential treatment as required by this section, unless the prior written consent of the company to which it pertains has been obtained.

10 Investment in Insurance Corporations; Domestic Insurers. Amend RSA 401-B:2, III(a) to read as follows:

(a) Any domestic insurer, other than a domestic life insurer, may invest, or otherwise acquire common stock, preferred stock, debt obligations, and other securities of one or more foreign or domestic insurance subsidiaries, in an amount which, together with its present holdings and with indirect or proportionate interest in such stocks held by it through any intermediate subsidiary or subsidiaries, shall not exceed the lesser of 10 percent of such insurer's assets or 50 percent of the surplus to policyholders of such acquiring insurer, **provided that after such investments, the insurer's surplus as regards policyholders shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.**

11 New Subparagraph; Requirements for Approval by Commissioner of Mergers or Acquisitions. Amend RSA 401-B:3, VI(a) by inserting after subparagraph (6) the following new subparagraph:

(7) The acquisition is likely to be hazardous or prejudicial to the insurance buying public.

12 Statutory References Added. Amend RSA 401-B:4, I to read as follows:

I. REGISTRATION. Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in [this section] **RSA 401-B:4 and 401-B:5.** Any insurer which is subject to registration under this section shall register within 60 days after the effective date of this chapter or 15 days after it becomes subject to registration, whichever is later; unless the commissioner for good cause shown extends the time for registration, and then within such extended time. The commissioner may require any authorized insurer which is a member of a holding company system which is not subject to registration under this section to furnish a copy of the registration statement or other information filed by such insurance company with the insurance regulatory authority of domiciliary jurisdiction.

13 Insurer Registration Information. Amend RSA 401-B:4, II(b) to read as follows:

(b) The identity **and relationship** of every member of the insurance holding company system;

14 Insurer Registration Information. Amend RSA 401-B:4, II(c)(6) to read as follows:

(6) Reinsurance agreements [covering all or substantially all of one or more lines of insurance of the ceding company];

15 Insurer Standards Within A Holding Company; Loans. Amend RSA 401-B:5, I(b)(2) to read as follows:

(2) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes such loans or extensions of credit with the agreement or understanding that the proceeds of such transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making such loans or extensions of credit provided such transactions are equal to or exceed[.];

(a) with respect to nonlife insurers, the lesser of 3 percent of the insurer's admitted assets or 25 percent of **surplus as regards policyholders**;

(b) **with respect to life insurers, 3 percent** of the insurer's admitted assets, each as of **the 31st day of** December [31], next preceding.

16 Section Heading Changed; Valuation of Securities. Amend the section heading of RSA 402:30 to read as follows:

402:30 Valuation of [Eligible Investments] **Securities**.

17 Reference Changed to Valuation of Securities. Amend RSA 402:30, I to read as follows:

I. [Investments] **Securities** held in accordance with the provisions of this subdivision shall be valued in accordance with the published valuation standards of the Securities Valuation Office of the National Association of Insurance Commissioners.

18 New Chapter; Business Transacted with Producer Controlled Property/Casualty Act. Amend RSA by inserting after chapter 402-F the following new chapter:

## CHAPTER 402-G

### BUSINESS TRANSACTED WITH PRODUCER CONTROLLED PROPERTY/CASUALTY ACT

402-G:1 Definitions. In this chapter:

I. "Accredited state" means a state in which the insurance department or regulatory agency has qualified as meeting the minimum financial regulatory standards promulgated and established from time to time by the National Association of Insurance Commissioners (NAIC).

II. "Control" or "controlled" means "control" as defined in RSA 401-B:1, III.

III. "Controlled insurer" means a licensed insurer which is controlled, directly or indirectly, by a producer.

IV. "Controlling producer" means a producer who, directly or indirectly, controls an insurer.

V. "Licensed insurer" or "insurer" means any person, firm, association, or corporation duly licensed to transact a property/casualty insurance business in this state. The following, among others, are not licensed insurers for the purposes of this chapter:

(a) All risk retention groups as defined in this Superfund Amendments Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) and the Risk Retention Act, 15 U.S.C. Section 3901 et seq. (1982 & Supp. 1986) and RSA 405-A;

(b) All residual market pools and joint underwriting authorities or associations; and

(c) All captive insurers which, for the purposes of this chapter, are insurance companies owned by another organization whose exclusive purpose is to insure risks of the parent organization and affiliated companies or, in the case of groups and associations, insurance organizations owned by the insureds whose exclusive purpose is to insure risks to member organizations or group members, or both, and their affiliates.

VI. "Producer" means an insurance broker or brokers or any other person, firm, association or corporation, when, for any compensation, commission or other thing of value, such person, firm, association or corporation acts or aids in any manner in soliciting, negotiating, or procuring the making of any insurance contract on behalf of an insured other than the person, firm, association, or corporation.

402-G:2 Applicability. This chapter shall apply to licensed insurers, as defined in RSA 402-G:1, V, either domiciled in this state or domiciled in a state that is not an accredited state having in effect a substantially similar law. All provisions of RSA 401-B, to the extent they are not superseded by this chapter, shall continue to apply to all parties within holding company systems subject to the chapter.

402-G:3 Minimum Standards; Required Contract Provisions.

I. Applicability of section:

(a) The provisions of this section shall apply if, in any calendar year, the aggregate amount of gross written premium on business placed with a controlled insurer by a controlling producer is equal to or greater than 5 percent of the admitted assets of the controlled insurer, as reported in the controlled insurer's quarterly statement filed as of September 30 of the prior year.

(b) Notwithstanding subparagraph I(a), the provisions of this section shall not apply if:

(1) The controlling producer:

(A) Places insurance only with the controlled insurer, or only with the controlled insurer and a member or members of the controlled insurer's holding company system, or the controlled insurer's parent, affiliate, or subsidiary and receives no compensation based upon the amount of premiums written in connection with such insurance; and

(B) Accepts insurance placements only from non-affiliated subproducers, and not directly from insureds; and

(2) The controlled insurer, except for insurance business written through a residual market facility, accepts insurance business only from a controlling producer, a producer controlled by the controlled insurer, or a producer that is a subsidiary of the controlled insurer.

II. A controlled insurer shall not accept business from a controlling producer and a controlling producer shall not place business with a controlled insurer unless there is a written contract between the controlling producer and the insurer specifying the responsibilities of each party, which contract has been approved by the board of directors of the insurer and contains the following minimum provisions:

(a) The controlled insurer may terminate the contract for cause, upon written notice to the controlling producer. The controlled insurer shall suspend the authority of the controlling producer to write business during the pendency of any dispute regarding the cause for the termination.

(b) The controlling producer shall render accounts to the controlled insurer detailing all material transactions, including information necessary to support all commissions, charges and other fees received by, or owing to, the controlling producer.

(c) The controlling producer shall remit all funds due under the terms of the contract to the controlled insurer on at least a monthly basis. The due date shall be fixed so that premiums or installments thereof collected shall be remitted no later than 90 days after the effective date of any policy placed with the controlled insurer under this contract.

(d) All funds collected for the controlled insurer's account shall be held by the controlling producer in a fiduciary capacity, in one or more appropriately identified bank accounts in banks that are members of the Federal Reserve System, in accordance with the provisions of the insurance law as applicable. However, funds of a controlling producer not required to be licensed in this state shall be maintained in compliance with the requirements of the controlling producer's domiciliary jurisdiction.



(e) The controlling producer shall maintain separately identifiable records of business written for the controlled insurer.

(f) The contract shall not be assigned in whole or in part by the controlling producer.

(g) The controlled insurer shall provide the controlling producer with its underwriting standards, rules and procedures, manuals setting forth the rates to be charged, and the conditions for the acceptance or rejection of risks. The controlling producer shall adhere to the standards, rules, procedures, rates, and conditions. The standards, rules, procedures, rates, and conditions shall be the same as those applicable to comparable business placed with the controlled insurer by a producer other than the controlling producer.

(h) The rates and terms of the controlling producer's commissions, charges, or other fees and the purposes for those charges or fees. The rates of the commissions, charges, and other fees shall be no greater than those applicable to comparable business placed with the controlled insurer by producers other than controlling producers. For purposes of this subparagraph and subparagraph II(a) of this section, examples of "comparable business" includes the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of business.

(i) If the contract provides that the controlling producer, on insurance business placed with the insurer, is to be compensated contingent upon the insurer's profits on that business, then such compensation shall not be determined and paid until at least 5 years after the premiums on liability insurance are earned and at least 1 year after the premiums are earned on any other insurance. In no event shall the commissions be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified pursuant to paragraph IV of this section.

(j) A limit on the controlling producer's writings in relation to the controlled insurer's surplus and total writings. The insurer may establish a different limit for each line or sub-line of business. The controlled insurer shall notify the controlling producer when the applicable limit is approached and shall not accept business from the controlling producer if the limit is reached. The controlling producer shall not place business with the controlled insurer if it has been notified by the controlled insurer that the limit has been reached.

(k) The controlling producer may negotiate but shall not bind reinsurance on behalf of the controlled insurer on business the controlling producer places with the controlled insurer, except that the controlling producer may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the controlled insurer contains underwriting guidelines including, for

both reinsurance assumed, and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured and commission schedules.

III. Every controlled insurer shall have an audit committee of the board of directors composed of independent directors. The audit committee shall annually meet with management, the insurer's independent certified public accountants, and an independent casualty actuary or other independent loss reserve specialist acceptable to the commissioner to review the adequacy of the insurer's loss reserves.

IV. Reporting requirements are as follows:

(a) In addition to any other required loss reserve certification, the controlled insurer shall file annually, on April 1 of each year, with the commissioner an opinion of an independent casualty actuary, or such other independent loss reserve specialist acceptable to the commissioner, reporting loss ratios for each line of business written and attesting to the adequacy of loss reserves established for losses incurred and outstanding as of year-end, including incurred but not reported, on business placed by the producer; and

(b) The controlled insurer shall annually report to the commissioner the amount of commissions paid to the producer, the percentage such amount represents of the net premiums written, and comparable amounts and percentage paid to noncontrolling producers for placements of the same kinds of insurance.

402-G:4 Disclosure. The producer, prior to the effective date of the policy, shall deliver written notice to the prospective insured disclosing the relationship between the producer and the controlled insurer, except that, if the business is placed through a subproducer who is not a controlling producer, the controlling producer shall retain in his records a signed commitment from the subproducer that the subproducer is aware of the relationship between the insurer and the producer and that the subproducer has or will notify the insured.

402-G:5 Penalties.

I.(a) If the commissioner believes that the controlling producer or any other person has not materially complied with this chapter, or any rule adopted or order issued under this chapter, after notice and opportunity to be heard, the commissioner may order the controlling producer to cease placing business with the controlled insurer; and

(b) If it was found that because of such material non-compliance that the controlled insurer or any policyholder thereof has suffered any loss or damage, the commissioner may maintain a civil action or intervene in an action brought by or on behalf of the

insurer or policyholder for recovery of compensatory damages for the benefit of the insurer or policyholder or other appropriate relief.

II. If an order for liquidation or rehabilitation of the controlled insurer has been entered pursuant to RSA 402-C, and the receiver appointed under that order believes that the controlling producer or any other person has not materially complied with this chapter, or any rule adopted or order issued under this chapter, and the insurer suffered any loss or damage therefrom, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer.

III. Nothing contained in this section shall affect the right of the commissioner to impose any other penalties provided for in the insurance laws.

IV. Nothing contained in this section is intended to or shall in any manner alter or affect the rights of policyholders, claimants, creditors or other third parties.

19 New Chapter; Conversion of Mutual Insurers. Amend RSA by inserting after chapter 403-A the following new chapter:

## **CHAPTER 403-B**

### **CONVERSION OF MUTUAL INSURERS**

403-B:1 Application of Chapter. A mutual insurance company organized under the laws of this state, other than an assessment mutual, may convert into a stock insurance company upon compliance with the provisions of this chapter.

403-B:2 Definitions. In this chapter:

I. "Commissioner" means the insurance commissioner.

II. "Conversion value" means the amount of the insurer's policyholder surplus, determined in accordance with those accounting procedures and practices prescribed by the National Association of Insurance Commissioners and by the commissioner, brought current to the date of adoption by the board of directors of the plan of conversion.

III. "Eligible policyholder" means, with respect to a mutual fire or casualty insurance company, a policyholder of the insurer on the date of adoption of the plan of conversion by the board of directors pursuant to RSA 403-B:3, I or, with respect to a mutual life insurance company, such policyholders defined in the plan of conversion approved by the commissioner.

IV. "Net premiums" means gross premiums paid by a policyholder to the insurer, less return premiums and dividends paid.

### 403-B:3 Procedure for Conversion.

I. An insurer may apply to the commissioner for conversion pursuant to this chapter by filing with the commissioner a plan of conversion adopted by 2/3 of the entire board of directors, which shall contain the following:

(a) The proposed articles of incorporation and bylaws to be adopted by the insurer upon its conversion to a stock insurance company.

(b) A statement of the manner of treating holders of surplus notes, if any notes are outstanding.

(c) Provisions for distribution of the conversion value in accordance with RSA 403-B:4.

(d) Provisions stating the manner and basis of exchanging the equitable share of each eligible policyholder for securities of the stock insurance company into which the insurer is to be converted, and the disposition of any unclaimed shares.

(e) The effective date of the plan of conversion or the method of determination of such effective date.

(f) Such other information as the commissioner may reasonably require.

II. The commissioner may retain at the insurer's expense such attorneys, actuaries, accountants, appraisers and other experts as shall be reasonably necessary to assist in the review of the insurer's plan of conversion.

III. Within 60 days after receipt of the completed plan of conversion the commissioner shall hold a hearing, written notice of which shall be given to the insurer not less than 30 days in advance of the hearing. Within 15 days after receiving the notice of hearing, the insurer shall notify eligible policyholders. Notice of such hearing shall be made at the expense of the insurer by mail to eligible policyholders, which notice shall include a copy of the plan of conversion or a summary of such plan approved by the commissioner.

IV. At the hearing, the insurer and any eligible policyholders shall have the right to appear and to present evidence, orally and in writing.

V. Within 30 days after the conclusion of the hearing, the commissioner shall approve the plan of conversion, unless the commissioner finds:

(a) The plan of conversion is unfair or inequitable to policyholders;

(b) The plan of conversion will cause the insurer to become unable to fulfill its contractual obligations;

(c) After the conversion of the insurer the stock insurance company would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(d) The financial condition of the insurer would be such as might jeopardize the financial stability of the converted stock insurance company, or prejudice the interest of its policyholders;

(e) The competence, experience and integrity of those persons who would control the operation of the stock insurance company are such that it would not be in the interest of policyholders of the insurer and of the public to permit conversion; or

(f) The plan of conversion does not comply with the provisions of this chapter.

VI. Upon approval by the commissioner, the plan of conversion shall be submitted to a vote of eligible policyholders. The board of directors shall schedule a meeting to be held for such purpose, and shall provide at least 10 days' prior written notice to eligible policyholders. Notice to eligible policyholders shall contain a copy of the plan of conversion and such other information as the commissioner may require. The notice of such meeting may be sent prior to the commissioner's approval, provided the notice clearly states that the plan of conversion is subject to such approval. The vote of 2/3 of the eligible policyholders voting in person or by proxy shall be necessary for the adoption of the plan of conversion.

VII. At any time prior to the date of the vote of eligible policyholders, the plan of conversion may be withdrawn or amended by majority vote of the entire board of directors, except that no amendment which materially changes the plan of conversion shall take effect unless such amendment is approved by the commissioner and eligible policyholders in accordance with the same conditions and procedures applicable to the original plan of conversion.

VIII. Upon adoption of the plan of conversion by the eligible policyholders, the commissioner shall certify his approval of the plan of conversion by an endorsement upon the articles of incorporation, which may then be recorded in accordance with the provisions of RSA 293-A, provided that copies of the original documents filed with the secretary of state shall also be filed with the commissioner.

403-B:4 Distribution of Conversion Value. The insurer shall follow the following conversion methodology:

I. Each eligible policyholder of a mutual fire or casualty insurance company shall have the right to purchase securities of the stock insurance company into which the insurer is to be converted, based upon such policyholder's proportionate amount of the conversion value determined by dividing the net premium paid by each eligible policyholder to the insurer with respect to the 3-year period immedi-

ately preceding the date of adoption of the resolution by the board of directors approving the plan of conversion by the total net premiums received by the insurer from eligible policyholders with respect to that period.

II. Each eligible policyholder of a mutual life insurance company shall have the right to purchase securities of the stock insurance company into which the insurer is to be converted based upon such policyholder's proportionate amount of the conversion value determinable under a fair formula approved by the commissioner.

III. The stock offering shall provide that eligible policyholders have the first right to purchase the stock at its stated value. Shares remaining unsold or not subscribed for may be offered to the general public, including, without limitation, the insurer's directors, officers, agents or employees, provided, however, that the price of shares offered to the general public shall be greater than or equal to the price of shares offered to eligible policyholders.

IV. The above distribution method shall constitute full payment and discharge of the policyholder's proportionate conversion value, but this provision shall not be held to prohibit the stock insurance company from including in the plan of conversion provisions for the distribution of any other valuable consideration to policyholders. Notwithstanding any other provision of law, the policyholders shall have no other rights with respect to the conversion of the insurer after the effective date of the conversion under this chapter.

403-B:5 Compensation. No director, officer or other employee of the insurer shall receive any fee, commission or other valuable consideration whatsoever, other than regular salary and compensation, for in any manner aiding, promoting or assisting in the conversion.

403-B:6 Issuance of New Certificate of Authority. After approval by the secretary of state of the articles of incorporation and certification by the insurer that the conversion has been effected, the commissioner shall issue a new certificate of authority to the insurer as a stock insurance company, effective as of the effective date of the conversion. The conversion shall be deemed to have been completed and the insurer shall become a domestic stock insurance company on such effective date, unless the plan of conversion shall have been terminated by the board of directors with the concurrence of the commissioner prior to such effective date. The stock insurance company shall be a continuation of the insurer and deemed to have been organized at the time the insurer was formed. The conversion shall not eliminate or change any of the insurer's rights and obligations existing prior to the date of conversion except as provided by this chapter. The stock insurance company, after conversion, shall exer-

cise all the rights and powers and perform all the duties conferred or imposed by law upon insurers writing the classes of insurance written by it.

403-B:7 Officers and Directors. The directors and officers of the insurer shall serve until the directors and officers of the stock insurance company have been duly elected and qualified pursuant to the articles of incorporation and bylaws of the stock insurance company.

403-B:8 Judicial Review. Any person aggrieved by any order or decision of the commissioner pursuant to this chapter may appeal from such decision in accordance with the provisions of RSA 541.

403-B:9 Rules. The commissioner shall adopt rules, pursuant to RSA 541-A, as may be necessary for the administration of this chapter.

20 Domestic Ceding Insurer, Domicile Required. Amend the introductory paragraph of RSA 405:46, III(a) to read as follows:

III.(a) Credit shall be allowed when the reinsurance is ceded to an assuming insurer, including a U.S. branch of an alien insurer, which is [licensed] **domiciled** in a state which employs standards regarding credit for reinsurance substantially similar to those applicable under this section and the assuming insurer or U.S. branch of an alien assuming insurer:

21 Definition; Plan of Operation. Amend RSA 405-A:1, IX(f) to read as follows:

(f) identification of management, underwriting and claims procedures, marketing methods, managerial oversight methods, investment policies; and reinsurance agreements; [and]

**(g) disclosure of each state in which the risk retention group has obtained, or sought to obtain, a charter or license, and a description of its status in each state;**

[(g)](h) such other matters as may be prescribed by the commissioner of the state in which the risk retention group is chartered for liability insurance companies authorized by the insurance laws of that state.

22 Conjunction Changed. Amend RSA 405-A:7, III(b)(2) to read as follows:

(2) since October 27, 1986, purchased its insurance from an insurance carrier licensed in any state; [and] **or**

23 Risk Retention Groups or Purchasing Groups. Amend RSA 405-A:11 to read as follows:

IV. Every person, firm, association, or corporation licensed pursuant to the provisions of this title, [or] **on** business placed with risk retention groups or written through a purchasing group, shall inform each prospective insured of the provisions of the notice required by RSA 405-A:3, VII, in the case of a risk retention group, and RSA 405-A:8, II, in the case of a purchasing group.

24 New Section; Valuation of Securities. Amend RSA 411-A by inserting after section 36 the following new section:

411-A:36-a Valuation of Securities. Securities held in accordance with the provisions of this subdivision shall be valued in accordance with the published valuation standards of the Securities Valuation Office of the National Association of Insurance Commissioners.

25 Applicability. Controlled insurers and controlling producers who are not in compliance with RSA 402-G as inserted by section 18 of this act on its effective date shall have 60 days to come into compliance and shall comply with RSA 402-G:4 beginning with all policies written or renewed on or after 60 days after January 1, 1993.

26 Repeal. RSA 401-B:3, VIII(a), relative to exempting offers of any voting security, is repealed.

27 New Section; Uniform Limited Offering Registration Form. Amend RSA 421-B by inserting after section 15 the following new section:

421-B:15-a Uniform Limited Offering Registration. The attorney general shall adopt rules, pursuant to RSA 541-A, relative to adoption in this state of Form ULOR-C, the general registration form for corporations registering under state securities law securities that are exempt from registration with the Securities and Exchange Commission under Rule 504 of Regulation D.

28 Committee Established. There is hereby established a committee to determine the impact of New Hampshire's product liability laws on manufacturers in New Hampshire. The committee shall consist of the following:

I. One senator, appointed by the senate president.

II. One senator from the judiciary committee, appointed by the senate president.

III. One representative, appointed by the speaker of the house.

IV. One person representing a manufacturing concern, appointed by the governor and council.

V. One attorney, appointed by the New Hampshire Bar Association.

VI. One public member, appointed by the senate president.

VII. One public member, appointed by the speaker of the house.

VIII. One representative from the commerce, small business and consumer affairs committee, appointed by the speaker of the house.

IX. One attorney, appointed by the New Hampshire Trial Lawyers Association.

X. One representative of the New Hampshire Association of Commerce and Industry, appointed by such association.

XI. One representative of the New Hampshire Association of Domestic Insurance Companies, appointed by such association.



29 Meetings and Report. The committee shall hold its first meeting within 30 days after the effective date of this act. At the first meeting, the committee shall elect a chairperson from among its members. The committee shall report its findings and any recommendations for legislation to the speaker of the house, the senate president, and the governor on or before November 1, 1992.

30 Mileage. Members of the committee shall not receive compensation for their services, except that legislative members shall receive mileage at the legislative rate.

31 Content of Notice. Amend RSA 541-A:3-a, III(e) to read as follows:

(e) the date of [intention to hold a] **the first agency public hearing [or] and** the cut-off date for the submission of written materials to the agency;

32 Notice to Licensees of Agencies Regarding Rulemaking Proceedings. Amend RSA 541-A:3-a, IV to read as follows:

IV. The agency shall send notice to the director of legislative services, to the president of the senate and the speaker of the house of representatives, to the chairman of the fiscal committee, to the chairmen of the legislative committees having jurisdiction over the subject matter, [and] to all persons who have made timely request [of the agency] for advance notice of [its] rulemaking proceedings **and to all persons who hold occupational licenses issued by the agency. Notice shall be made not less than 20 days before the first agency public hearing required by RSA 541-A:3-c. Notice to occupational licensees must be by U.S. Mail, agency bulletin or newsletter, public notice advertisement in publications of general circulation or in such other manner deemed sufficient by the joint legislative committee on administrative rules.**

33 Hearing Required. RSA 541-A:3-c, I is repealed and reenacted to read as follows:

I. Each agency shall hold at least one public hearing before a quorum of its members on all proposed rules and shall afford all interested persons reasonable opportunity to testify and to submit data, views or arguments in writing in accordance with the terms of the notice.

34 Effective Date.

I. Sections 3 and 4 of this act shall take effect July 1, 1992.

II. Sections 5-27 of this act shall take effect January 1, 1993.

III. The remainder of this act shall take effect 60 days after its passage.

### AMENDED ANALYSIS

I. Section 1 of this bill is a general purpose statement.

II. Section 2 of this bill requires the superior court to submit a plan to the general court to establish a division to hear cases involving corporate and commercial matters.

III. Sections 3 and 4 of the bill establish an exemption from state securities registration requirements for securities issued by investment companies which are subject to regulation by the U.S. Securities and Exchange Commission and which have, by themselves or through their investment advisers, established a performance record in the mutual fund industry. New investment companies which do not meet the prior performance criteria must make the full registration filings with the state. Accordingly, the state retains full review authority with respect to these "untested" investment companies.

IV. Sections 5-26 of the bill allow mutual insurance companies organized under the laws of New Hampshire to convert into stock insurance companies, make changes in the insurance laws required by the National Association of Insurance Commissioners and establish a new chapter which regulates business transacted with producer controlled property/casualty insurance.

V. Section 27 of the bill requires the attorney general to adopt rules allowing "ULOR" securities offerings in this state. These securities offerings are exempt from federal registration and regulation under Rule 504 of Regulation D of the Securities and Exchange Commission, and include offerings of up to \$1,000,000 per year. Small companies desiring to make such offerings would be required to file a Form ULOR-C form, which is designed to be used by companies whose lawyers and accountants are not necessarily specialists in securities laws.

VI. Sections 28-30 of the bill establish a committee to study the impact of New Hampshire's product liability laws on manufacturers in New Hampshire.

VII. Sections 31-33 of this bill require at least 20 days' notice of proposed rules changes, under the administrative procedure act, to be given before the first required agency public hearing. Such notice shall be given to all persons who hold or have applied for occupational licenses from the agency in addition to those entitled to notice under current law.

SENATOR FRASER: SB 339 is a combination of former Senate bills 308, the organizing the New Hampshire Business corporation act, SB 310, by the way 308 is not part of this package. SB 310 establishing a chancery court, 322 limiting the advertising expenses of public utilities, 336 providing exemption for issuance of securities by

certain established investment companies and 339 to study the New Hampshire product liability laws on manufacturers impact, it has on manufacturers, 3402 allowing mutual insurance to convert to stock insurance companies and 464 relative to intellectual property. Mr. President, with your permission, I would like to just refer to the amended version which appears on page 20 of the calendar, title #17 on March 4. Part one, of course, is the general purpose. Mr. President, part two is an amendment to a bill that was heard in Judiciary which now requires the Superior Court to submit a plan to the General Court establishing a division to hear cases involving corporate and commercial matters. Sections three and four of the bill, establish an exemption for certain securities registration requirements. This bill was heard in the Banks committee, it was heard on the floor and it was unanimously adopted. Section five through twenty-six, is a bill that was also heard in the Insurance committee and it was debated on the floor. This bill would allow mutual insurance companies to convert to stock companies. The amended version also includes life companies. The third part of the amendment has to do with the codification of the NAIC model bills that are relative to insolvency. Section 27 which is Senator King's bill, it formalizes the so called, these are securities that are offered by local businesses under \$1,000,000 to complete one form rather than to have to hire all kinds of experts in order to get the exemption. Section 28 through 30 is the committee to establish to study the products liability laws in the state of New Hampshire. Section 31 through 33 is a piece requiring 28 days notice of any proposed rules and allowing for anyone that is licensed or proposed to be licensed under those sections, would also be notified so that they could be heard. I would be glad to answer any questions.

SENATOR HOLLINGWORTH: Senator Fraser, I am a little concerned because there are several things in here that the Judiciary committee looked at, and in fact, were opposed to. So I am somewhat disturbed that it has passed. Could you tell me why?

SENATOR FRASER: I am sorry, Senator, could you speak just a little bit louder?

SENATOR HOLLINGWORTH: Well I am somewhat confused as to why this package is first, under Economic Development. I guess that is my first question. Then there are other things in here that I don't believe the Judiciary committee supported and I see them in this package and I am not quite sure why they are here.

SENATOR FRASER: Well I think you're probably referring to part two, having to do with the piece that requires the Superior Court to submit a plan to the General Court to establish a division to hear

cases involving property on commercial matters. I am not conversed and I know that you are, Senator Hollingworth, because the bill was heard in your committee. But this requires the court to submit to the General Court a plan whereas under the original bill we were going to mandate that these things be done by the General Court. The Economic Development committee felt that it was worthwhile to have this in the package. To answer the other part of your question, I think it's once again where it's a corporate matter, that is why they included it in the Economic Development SB 339. I don't know if I have answered your question.

SENATOR HOLLINGWORTH: That is fine for now, I see other hands up and maybe it will be answered as we go along.

SENATOR PODLES: Senator Fraser, you did indicate that this is just a plan to establish, would you believe that is the beginning of a chancery court to be established? You are asking for a plan here within the Superior Court division to hear cases of corporate law. Corporate law cases are already heard in the Superior Court.

SENATOR FRASER: I understand that, Senator. I understand that fact, but I'm not sure that I understand your question. Are you suggesting that this should not be in there because it would require the Superior Court to file a plan to the General Court?

SENATOR PODLES: No. I am suggesting that a decision has already been made by the Senate Judiciary committee to make the establishment of the chancery court inexpedient to legislate. I am a little upset to see it come in here and asking the Superior Court for a plan. They are already hearing corporate cases in the Superior Court. We now have 36 cases on the docket that should have priority and here we are asking for a plan to set aside two judges just for a chancery court.

SENATOR FRASER: Senator Podles, I would be less than frank with you if I said that I understood all of the aspects of what you are speaking. All I know is that you'd be concerned about the needs to have at least a plan to get more expertise in the area of corporate law, which apparently lacks in our judicial system today. It was the sense of the committee that this was a step in that direction.

SENATOR PODLES: Would you believe that the Superior Court has a plan? They do take care of corporate law cases, so they do have a plan already?

SENATOR NELSON: I rise in strong support of the Chairman of the Judiciary committee, Senator Podles. The bill was unequivocally killed. There was no discussion in the committee. The bill was unanimously shot to the ground. We heard testimony from the Chief Jus-

tice of the Superior Court of New Hampshire. We are a state of a million people. If the business community in the state of New Hampshire thinks that by not passing this bill we are not supportive, they are sadly mistaken. This is not right. We don't need it. We are opening a brand new courthouse, we need to get two new judges in Nashua and Manchester and for all of Hillsborough. We have a backlog in our court system that is second to none for the everyday citizen of the state. They can't get into the courts. We want to now have them take time to start a new plan when they already have a 21st century plan? I absolutely support the Chairman of this committee. I don't like it at all that this went to this committee, and then they decided after we unanimously put it down that they are bringing it out when we heard the testimony.

SENATOR DUPONT: I certainly am going to enjoy the discussion that we have on the floor today and I hope that we would please be able to put our strong feelings to one side and at least let the Economic Development committee explain to the Senate why it took this action. Senator Nelson, you and I have privately, many times, discussed trying to keep the Nashua courthouse on track, bringing more judges in to try and address some of the backlog that exists there. I appreciate Senator Podles comments and her strong feelings about the court system and the Judiciary committee. But the fact of the matter is, whether we want to acknowledge it or not and in about a couple of weeks or a month, this committee is going to receive a document that deals with strategic plans for our court system and it is very thick. It is on my desk and I have assigned it to the Judiciary committee and they are going to hear it. The fact of the matter is that if you are a business, and don't forget, Senator Nelson, and the rest of you that businesses provide jobs. That is what we are talking about today. People have referred to the state of Delaware as a place where they like to incorporate businesses. They don't go to Delaware just because their incorporation laws are favorable. They go there because they run into a court system and it's not even a timing issue in Delaware. It is having a court system that has people who specialize in business issues. So we haven't said to the court 'we are going to take two judges and assign them to do just business as usual', we have said to the court system 'will you take a look at putting together a plan, maybe it's going to require training the judges on business issues, maybe it's going to require two new judges, I don't know that. I don't think the committee is fully comfortable with just discarding this and saying that it doesn't have merit to even look at it. I don't think that this is affront to the Judiciary committee, I think that this is a recognition that the Judiciary committee felt strongly enough about this that they couldn't move

forward and that there ought to be more information put before the General Court before we just discard outright, whether or not this has any merit. I appreciate the sensitivity about the Judiciary's prerogative over this issue, but on the other hand, if you're going to talk about putting together a package that is going to make sense to the state of New Hampshire, this issue needs to be dealt with and if it isn't dealt with now, it is going to need to be dealt with next year and the year after and the year after that. We have attorneys in the state who specialize in business issues. We have attorneys in the state who specialize in probate issues. They go to probate court. If they are trial attorney's that prosecute criminal matters, they go to a Superior Court where there is speciality people in criminal matters. All that we are saying is that there ought to be some recognition within the court system that business issues are important and there ought to be justices on the court that specialize in that area.

SENATOR MCLANE: Senator Dupont, to get this down to a really simple level where I can understand it, all that the business economic development group is asking is that they study the issue of how to deal with these 36,000 business cases that are holding up the courts. You're asking just for a study?

SENATOR DUPONT: Senator McLane, we are asking the Superior Court to come back to us and say that they have looked at this, and have given it some thought, and this is what we would propose as a way of dealing with businesses. This doesn't setup a chancery report. This legislature is going to have to deal with it at some point. We are going to have to deal with the issue of people waiting three years to get into the court system. That is a recognition that we are going to have to deal with. There also ought to be a recognition that now we are all running around saying that we want jobs, everybody. We are standing around and we are saying let's bring jobs to the state of New Hampshire and this committee has looked at some specific issues that will have no effect in terms of immediately bringing jobs to the state of New Hampshire. As Senator King said, the state government isn't going to create jobs, what we are going to create is an environment that business finds attractive to be here. This is a significant problem for the business community that when they get a lawsuit filed against them on business issues, peoples jobs are hanging in the balance.

SENATOR MCLANE: They now have to wait three years to get some satisfaction?

SENATOR DUPONT: And they have to now wait three years. Economic activity may be suspended and it may have to wait three years.

SENATOR MCLANE: Thank you.

SENATOR W. KING: I recognize that the Judiciary committee did hear this bill and I think that the Economic Development committee was sensitive to the issues that you raised. I would remind everyone here that we did not vote on this bill, that it was tabled in the Senate, partly because I was away on that particular day delivering a baby and so I wasn't able to be here to make the fight on the issue. What we did rather than making the fight on the issue that came before you was to try and be sensitive to the fact that the Judiciary committee was concerned about us mandating that the court create a chancery report and instead saying to the Superior Court please tell us how it is that we can create an atmosphere where businesses can be confident when they go into court that they are going to get a judge who has expertise in corporate law issues. One of the problems that exists today is that a business spins a roulette wheel when they go into a court in terms of whether or not they will get a judge who understands the fine nuances of corporate law. Corporate law is very complex, as many of us have found out over the last few days as we have been dealing with the bill that we will talk about later on, the revision of corporate law. Particularly if we are going to revise corporate law, it seems to make sense that we don't make all of the justices of the Superior Court learn not only all the new corporate law that we have revised, but all of the case law that applies to that corporate law. So it was our feeling that rather than telling Superior Court that they must do this, that we should instead be sensitive to the Judiciary committee and say that we would like them to present us a plan as to how it would be done.

SENATOR COLANTUONO: I am the fourth member of the Judiciary committee to rise in opposition to this part of this package bill. I rise to let the Senators know that I will be proposing a floor amendment to take this out if this amendment passes. I just want to address two reasons why four out of five of us on the committee are named on this amendment and why we feel strongly that this part of the bill should be taken out. First of all on the merits. I want to reiterate what was said already that this bill had a full public hearing in front of the policy committee it was assigned to which is the Judiciary. It had massive opposition, especially from the Chief Justice of the Superior Court. Without boring you with all the details of why the bill is a bad bill, I would just say that the policy committee believes that this bill was so bad that it wasn't even worth trying to resurrect with an amended version or whatever, it was just voted inexpedient to legislate because it is a bad idea. We are not anti business because we are against this bill. I frankly think the burden of proof is on the proponents and say how many jobs will this bill

provide to the state of New Hampshire. I think that it is ludicrous to say that it will add even one job to the state of New Hampshire. Businesses want to stay out of court, they don't want to go in there. What we need is to find ways to lower litigation and not to add to it. I can say that because I am not a corporate lawyer or someone who specializes in business litigation myself, but I can tell you that all 26 or however many Superior Court judges we have are fully competent to handle any type of business or corporate matter that comes before them. It is just simply a bad idea to set out two or three or however many, and set them up as some special division within the Superior Court to hear just these cases, because you take them away from all of the other cases that they have to hear, especially down there in places like the Nashua Court House. We all know that the criminal docket has the priority and we have to keep those cases moving and we can't take resources away from that. There is a separation of powers issue here. We are telling the court now that they have to come back to us with a plan to do something within their branch, which frankly, if this passes, I wouldn't be surprised if they just tell us to go pound sand and don't even do it. I would support that. The second issue here is an issue of process. As I said, this committee heard the bill, heard all the testimony, made its recommendation in the normal course, and for this bill to then be resurrected through another committee of this Senate, even though it has been watered down and so forth, was and is frankly, offensive to our committee. It is frankly, an affront to the process of how we deal with bills. If we are going to have a committee sitting upstairs that can take all of these bills that we find to be inexpedient and resurrect them and put them in a package, where they are in among all these other good things, and given to you on a take it or leave it basis, I think that is unfair to the Senators who worked very hard in the policy committees who have studied these things and to have come up with their recommendations to the floor. So for both the reasons of merits and process, we are going to propose a floor amendment to take this part out of the bill.

Committee amendment adopted.

SENATOR HOLLINGWORTH: Senator Fraser, on page 16 of the calendar numbered 16, is the product liability section of the bill that passed through the Insurance committee, and I noticed that the member that we had inserted into the bill, one individual who has been injured by a defective product appointed by fair access to the courts has been removed and in its place has been appointed a member from the insurance industry. I was wondering if you could explain why that change?



SENATOR FRASER: Senator Hollingworth, it is on page 19 half-way down.

SENATOR HOLLINGWORTH: Yes, establishing a committee to study the impact of New Hampshire's product liability laws on manufacturers in New Hampshire. I have Senate Bill 339 in front of me which was voted ought to pass by the Judiciary. Excuse me, the bill was from the Judiciary committee not the Insurance committee. On the bill out of the Judiciary, we said that there should be one member who had been injured by a defective product. In its place we now have a member from the insurance industry. I was wondering why that is, since, I believe, that there was already a member from the insurance industry, why this was changed?

SENATOR FRASER: I am looking at the amendment, Senator, and I see only one member of the insurance industry and that is XI.

SENATOR HOLLINGWORTH: Excuse me. It is a representative of the New Hampshire Associative Commerce and Industry, but we already had one of those, I believe. So what you have done is, that you have just taken out that member of the defective product, but you have replaced him with someone and I am not sure who.

SENATOR FRASER: There was discussion about your concern, and what the committee felt was that this study committee as has been structured in the amended version of the bill, it gave it more balance than the original bill. In other words, the New Hampshire trial lawyers that are representing New Hampshire Bar Association are represented and it is my recollection that when we amended that original bill, it was because of the fact that the committee thought that it gave the study committee more balance.

SENATOR HOLLINGWORTH: The Judiciary committee thought long and hard and we felt that one person who had been affected by a product liability on this very large study committee certainly would not be a threat to commerce and consumer affairs, the BIA, the trial lawyers, and all the other people who are going to be there. The committee did vote unanimously that that member be inserted. I am somewhat bewildered why Economic Development would chose to remove that one individual and I am still not satisfied with the answer that we have received.

SENATOR COLANTUONO: I would like to give Senator Hollingworth an opportunity to get a floor amendment to put that back in and maybe while we are discussing my floor amendment. I would like to offer my floor amendment now, which the clerk has. This is the amendment which would take out the language about the so

called chancery court, which is section two. That is all that my amendment does. I would ask for the support of the members of the Senate.

Senator Colantuono offered a floor amendment.

### **5322L**

#### **Floor Amendment to SB 339**

Amend the bill by deleting section 2 and renumbering the original sections 3-34 to read as 2-33, respectively.

Amend the bill by replacing section 24 with the following:

24 Applicability. Controlled insurers and controlling producers who are not in compliance with RSA 402-G as inserted by section 17 of this act on its effective date shall have 60 days to come into compliance and shall comply with RSA 402-G:4 beginning with all policies written or renewed on or after 60 days after January 1, 1993.

Amend the bill by replacing section 33 with the following:

33 Effective Date.

I. Sections 2 and 3 of this act shall take effect July 1, 1992.

II. Sections 4-26 of this act shall take effect January 1, 1993.

III. The remainder of this act shall take effect 60 days after its passage.

#### **AMENDED ANALYSIS**

I. Section 1 of this bill is a general purpose statement.

II. Sections 2 and 3 of the bill establish an exemption from state securities registration requirements for securities issued by investment companies which are subject to regulation by the U.S. Securities and Exchange Commission and which have, by themselves or through their investment advisers, established a performance record in the mutual fund industry. New investment companies which do not meet the prior performance criteria must make the full registration filings with the state. Accordingly, the state retains full review authority with respect to these "untested" investment companies.

III. Sections 4-25 of the bill allow mutual insurance companies organized under the laws of New Hampshire to convert into stock insurance companies, make changes in the insurance laws required by the National Association of Insurance Commissioners and establish a new chapter which regulates business transacted with producer controlled property/casualty insurance.

IV. Section 26 of the bill requires the attorney general to adopt rules allowing "ULOR" securities offerings in this state. These securities offerings are exempt from federal registration and regulation under Rule 504 of Regulation D of the Securities and Exchange

Commission, and include offerings of up to \$1,000,000 per year. Small companies desiring to make such offerings would be required to file a Form ULOR-C form, which is designed to be used by companies whose lawyers and accountants are not necessarily specialists in securities laws.

V. Sections 27-29 of the bill establish a committee to study the impact of New Hampshire's product liability laws on manufacturers in New Hampshire.

VI. Sections 30-32 of this bill require at least 20 days' notice of proposed rules changes, under the administrative procedure act, to be given before the first required agency public hearing. Such notice shall be given to all persons who hold or have applied for occupational licenses from the agency in addition to those entitled to notice under current law.

SENATOR PODLES: Is it appropriate to ask another question here on the amendment?

SENATOR DELAHUNTY: (In the chair) On the amendment?

SENATOR PODLES: Yes.

SENATOR DELAHUNTY: (In the chair) Yes, Senator Podles, go ahead.

SENATOR PODLES: Senator King, I am just questioning the composition of the committee. It says one public member appointed by the Senate President and one public member appointed by the Speaker of the House. There are no public members appointed by the Governor or . . .

Recess.

Out of recess.

A roll call was requested by Senator Podles.

Seconded by Senator Heath.

The following Senators voted Yes: Heath, Currier, Disnard, Pressly, Nelson, Colantuono, Podles, St. Jean, Hollingworth.

The following Senators voted No: Oleson, W. King, Fraser, Hough, Dupont, Roberge, Blaisdell, Bass, McLane, J. King, Russman, Shaheen, Cohen.

Yeas 9

Nays 13

Floor amendment failed.

SENATOR PRESSLY: The amendment starts on page 16 of the calendar. The amendment basically is a request to eliminate one of the components of this section. It is the component that starts at the

bottom of page 16, it is number 19. It concludes on the bottom of page 18 in your number 17 calendar. This amendment is basically to eliminate the conversion of mutual insurers. I would like to then speak to that. The part to be eliminated begins at the bottom of page 16 and goes to the bottom of page 18 and it's called general conversion of mutual insurers. This amendment is also sponsored by Senator Nelson. My concern, and Senator Nelson will speak to hers also, is this is an irreversible . . . permanent enabling legislation. What this does is this enables a conversion of ownership for insurance companies. This is a very, very, very significant important section within this economic development. What this allows is the management of an insurance company to change its whole method of ownership from mutual ownership to stockholders. What this will allow them to do, this will allow them to gain a great deal of money. This is very much like what the legislature did for the banks a couple of years ago and I think that we all know what happened. We allowed all the banks to convert from mutual to stockholders and they acquired this vast amount of money and they went out and they loaned it rather indiscriminately. Many people feel that was the beginning of the difficulty that we now have in the banking industry. I, as many other people are extremely sympathetic, to many of the organizations that have invested in entities that have not done well. We are all very, very concerned about those groups, but allowing a change of ownership is not the solution. There is the possibility that we have insurance companies today that have invested very poorly and are hurting. I am sympathetic to this, but to allow them to totally change their ownership with no responsibility for their bad debts, to maintain the same management. What this bill allows, is, an insurance company that has possibly bought junk bonds that have maybe invested in the real estate market that is in difficulty today. This would allow them to, instead of being held responsible for their foolish indebtedness and their poor investments, it would allow the very same management that got them into the trouble that they are in now, to now go out and become a stockholding company, instead of a mutual company, and allow them to go on the stock market and bring in all sorts of money to bail them out. I think this is not the way. We did this once and it didn't work. I am very sorry if we have an insurance company that is in real trouble, we will have to face that and deal with that. But allowing them, the same team, the same management group to go ahead and just change the way they are owned so that they can get stock, bring in all sorts of new money, and then start investing again. They are still going to have the bad loans. I don't think that the people who have insurance with these companies are going to be served long term. It might be an instant gratification bill. It is going to help for the moment, some companies

that are sitting with some really poor real estate loans, but they are not the only entity that has made some mistakes, they are not the only groups that have invested poorly. If we allow them and almost encourage them, to now change their whole structure because the management invested poorly, I think that we are in fact, rewarding poor management. We are in fact, are not helping the people who are part of this by having invested. What we do today, this is irreversible today, okay? In January, this body will meet again. I cannot imagine anything really awful happening between now and January. But I do not see any safeguards in here whatsoever, for the consumer. This is strictly a change of ownership that is literally going to bail out some people who have poorly managed a mutual insurance company. It is going to keep the same crowd there that have mismanaged. It is strictly a bailout. I think the timing is inappropriate and voting to remove this means that you have until January to come up with a different solution. I think that this is extremely dangerous. We have already learned a tough lesson that this does not help entities. I strongly suggest that with this amendment, and removing this one portion of the economic package, will not hurt the whole effort of that group. I think that it would prevent this body from doing something that they may regret in the long run.

Senator Pressly offered a floor amendment.

**5325L**

### **Floor Amendment to SB 339**

Amend the bill by deleting section 19 and renumbering the original sections 20-34 to read as 19-33, respectively.

Amend the bill by replacing section 33 with the following:

**33 Effective Date.**

I. Sections 3 and 4 of this act shall take effect July 1, 1992.

II. Sections 5-26 of this act shall take effect January 1, 1993.

III. The remainder of this act shall take effect 60 days after its passage.

### **AMENDED ANALYSIS**

I. Section 1 of this bill is a general purpose statement.

II. Section 2 of this bill requires the superior court to submit a plan to the general court to establish a division to hear cases involving corporate and commercial matters.

III. Sections 3 and 4 of the bill establish an exemption from state securities registration requirements for securities issued by investment companies which are subject to regulation by the U.S. Securities and Exchange Commission and which have, by themselves or through their investment advisers, established a performance

record in the mutual fund industry. New investment companies which do not meet the prior performance criteria must make the full registration filings with the state. Accordingly, the state retains full review authority with respect to these "untested" investment companies.

IV. Sections 5-25 of the bill make changes in the insurance laws required by the National Association of Insurance Commissioners and establish a new chapter which regulates business transacted with producer controlled property/casualty insurance.

V. Section 26 of the bill requires the attorney general to adopt rules allowing "ULOR" securities offerings in this state. These securities offerings are exempt from federal registration and regulation under Rule 504 of Regulation D of the Securities and Exchange Commission, and include offerings of up to \$1,000,000 per year. Small companies desiring to make such offerings would be required to file a Form ULOR-C form, which is designed to be used by companies whose lawyers and accountants are not necessarily specialists in securities laws.

VI. Sections 27-29 of the bill establish a committee to study the impact of New Hampshire's product liability laws on manufacturers in New Hampshire.

VII. Sections 30-32 of this bill require at least 20 days' notice of proposed rules changes, under the administrative procedure act, to be given before the first required agency public hearing. Such notice shall be given to all persons who hold or have applied for occupational licenses from the agency in addition to those entitled to notice under current law.

SENATOR NELSON: I am going to try to smile. I didn't have a coat hanger that I usually put in my mouth that helps me smile and always be pleasant because I understand today that everytime someone speaks they are either anti-business or anti-jobs or anti-economic development. I am here to assure you that I am in favor of jobs, jobs, jobs. I love the Economic Development committee. I think that Eddy Dupont is the best. So I am talking strictly about the issues. I did a little research on this particular bill that now became an amendment to a Christmas tree. I raised the issue at the committee on Insurance with Senator Delahunty and the other Senators. I raised the question in the context of the big picture. I think that it is imperative that we in the state of New Hampshire take a holistic approach to the insurance industry here. Lest anybody think that I am exaggerating, I have articles: Insurance boss threatened, state budgets, taken from the government magazine. A bonafide magazine which you all receive. That was in December 15, 1991 taxpayers will be at the brunt of the insurance woes. Remem-

ber Texas? Texans became insurance casualties. You remember Executive Life out on the west coast that went down or had a lot of problems that is. "Senators say regulators knew of insurance insurers woes six years ago". I just wanted to let you know that it is being written about, it's being talked about, it's a reality, it's occurring in the United States. I am not saying that we have a problem in New Hampshire, I am not saying that everybody isn't doing the best that we can. "The recent collapse of Executive Life Insurance Company of California has raised a merit of questions about the financial practices of insurance companies and the patchwork system of state insurance regulations". Based on that, I feel that it is incumbent upon us as legislators to make sure that we have the proper regulations in place so that we don't do patchwork. I am not saying that this bill in and of itself is a problem, I am saying before we start dealing with one small issue we should be taking a look at the whole picture. That is my objection. If this makes it better, fine, Senator Pressly is absolutely correct. There are ways of converting in this particular piece of legislation. They say that there are three forces on them that they cannot, if they make mistakes or if they have problems they can be stopped, that is the stockholders, the Board of directors, there doesn't seem to be any regulations that are tight in there. We all have gone through the banking problems, the savings and loans that you and I and all the people are going to pay. There isn't anyone talking about that right now, just let us make sure that we don't make the same mistake, because insurance companies across the United States are heavily invested in junk bonds, heavily invested in real estate. I think that we should look at it closely. I am saying that maybe we ought to study it. I am not saying that we shouldn't help the companies in this state although not do anything with jobs as Wayne King said earlier. It is not our business to save them, but I certainly think we should do what we can to make it better for the people of the state of New Hampshire so that they don't get caught in paying for any companies that don't make it.

SENATOR BASS: I rise in opposition to the pending amendment. I do so however, with a lot of respect for Senator Pressly who has lead the fight for consumers rights, both in the Senate and both in the House. I have had the pleasure of working with her on a number of issues related to this. However, in this particular instance, I am unsure as to whether the consumer would benefit or not from the passage of this amendment and let me explain why. I'll start by saying that there are similarities between this conversion process and the bank conversion process which occurred in the early 80's. But there are also significant differences. The banks converted to stock because they wanted to raise money to expand and grow. The Insur-

ance companies and some mutuals, specifically, are going through the conversion process because they need to develop new resources in order to remain strong and viable. Now let's talk a second about who benefits from the conversion process or problems in the conversion process during the banking crisis versus during this insurance situation. When the banks converted, the funds that were raised that may or may not have been properly invested, resulted in the banks folding, but the depositors were protected by the FDIC and the FSLIC. If we do not allow the insurance companies, the ones that are in trouble to convert to stock and raise additional capital, who are the ultimate victims going to be? In a mutual insurance company, the owners are the policyholders. After the conversion, the owners are the shareholders, but the policyholders are the people who sacrifice in the end if the insurance company doesn't survive. There is no FDIC or FSLIC to come to the rescue, so ultimately, I oppose the amendment and support the conversion, because I am defending the policyholders, not the stockholders. Now let me point out that this conversion process allows the policyholders first crack at the stock, at a substantially reduced price than anybody else, including the management. So the management is going to have to pay substantially more for stock than the policyholder could get. It is imperative that we do not risk the financial situation that the policyholders may find themselves in and let me give you an example. If I am a policyholder in one of these insurance companies and I have a key man policy, I just straight pay and I have a policy. I have been paying, I am making this up; I have been paying \$2,000 - \$3,000 a year for this policy that is worth \$100,000 or \$50,000. If this insurance company that I have been subscribing with goes out of business, I don't get a thing. Every single premium that I have paid for as long as I have been around is gone and there is nothing left. That is a very unfortunate situation, but those are the people who are ultimately going to pay the price. I agree with Senator Pressly, there are problems with the conversion. There are problems because the policyholders who ultimately own the company are not getting anything for nothing out of this process, but what they are getting in some instances, is survival and protection of their investment, and their investment, in essence the premiums that they previously paid. The question was also brought up as to whether or not management could be changed. I would suggest that after conversion the stockholders have a better chance of changing the management in a mutual insurance company than do the policyholders under the present situation, because these policyholders are the people who will have access to the stock and they can vote their stock and change the management if necessary. I would urge the Senate to oppose this amendment and pass this bill along.



SENATOR PRESSLY: Just to clarify that, Senator Nelson is the one who spotted this and we have worked together on this. Thank you.

SENATOR BASS: Can I respond to that? I would like the Senate to know that I was unaware of this amendment until a few minutes ago and I didn't know who was responsible and so forth. Because Senator Pressly spoke first, I figured that she was the prime sponsor. I want to make sure that Senator Nelson understands that.

SENATOR PRESSLY: You have mentioned the need for resources in trouble. Can you tell me, Senator Bass, just who is responsible for getting these insurance companies in trouble?

SENATOR BASS: Who is responsible for getting these insurance companies in trouble? I would suggest that it would be the individuals who are responsible for making the investments that were not what they should have been, quite similar to the banks.

SENATOR PRESSLY: Is there anything in this bill that suggests that the people who are responsible for this will be held accountable in any way in the future ownership structure?

SENATOR BASS: The only way that I can answer that is with a question and that is, how would you suggest that people be responsible? Are you suggesting that they be thrown in jail?

SENATOR PRESSLY: I've been told that there are some regulations in this bill and I don't see them. Could you point out to me any language in this legislation that indicates that the commissioner is going to keep a closer eye, that the consumer is going to be protected or that anything positive is going to happen as far as accountability, and people being held responsible for their actions in the investment of other peoples money?

SENATOR BASS: I would suggest, Senator Pressly, that after the insurance companies convert from mutual to stockholders, if they do, and by the way that requires a super majority vote, as I recall, of the policyholders to do that, that is one safeguard. The shareholders will always have the opportunity to vote their shares and make changes in management that will, in my opinion, have the potential to provide better protection for the investment of those assets that is currently the situation.

SENATOR PRESSLY: Thank you.

SENATOR DUPONT: I probably can directly respond to some of Senator Pressly's concerns. This has been a difficult issue for me, because I share many of the same concerns that you had, Senator Pressly. I think that we are all eminently aware of some of the prob-

lems that happened in the banking industry. But I also think that you need to recognize that there are many banking institutions in this state that converted to mutual form of ownership, the stock form of ownership that are in very good condition and are continuing to lend that have provided good service to their community that all of them want to provide. There are a few examples of conversions that did not work out the way that we expected, but for the most part, I think, the analogy isn't totally accurate. One of the things that I think, the Insurance committee looked at, as you know there was some concern about this and I think that the commissioner, and if I could just speak briefly about the commissioner, because he happens to be a person that used to sit in this chamber and a constituent of mine. I think that we have all recognized and he has been recognized nationally, as someone who has done significant work in protecting the consumers of our state on insurance issues and I think is nationally recognized for this expertise and is pointed to as one of the finest insurance commissioners in the country. Then he could disapprove the conversion, that it is unfair or inequitable to the policyholders. That the plan of conversion will cause the insurer to be unable to fulfill its contractual obligations. It won't be able to satisfy the requirements for the issuance of a license or to be unable to write lines of insurance that are presently right. That it might jeopardize the financial stability of the converted stock company or prejudice the interest of its policyholders. That the competence, experience and integrity of those persons who would control the operations of the stock insurance company are such that it would not be in the interest for the policyholders of the insurer and of the public to commit to conversion. What you have in there is a body of language that establishes a test that protects the public, it protects the policyholders and in fact, it protects our state. It is in the hands of a very strong individual who has been recognized by his peers in terms of his competence. I would just like to point out one other point. Senator Bass, I think, did an excellent job of pointing out the fact that we ought to be concerned about the health of the insurance industry, because in fact, they don't have the federal government standing behind them as we did with the bank problem that faces our state and faces this nation. The fact of the matter is, before an insurance company can write a policy, it has to prove to the insurance commissioner that it has sufficient capital to be able to pay for that policy if a claim is made against that policy. What you are talking about in a couple of cases, is you may have mutual insurance companies who are in great financial health but want to expand their business, because of the mutual structure they cannot raise the capital necessary to properly insure against claims if they write new policies. So you may not be talking about investing more money in real estate or

investing more money in junk bonds, but what you may be talking about is taking a healthy company and allowing them the opportunity to expand, which creates more jobs, which creates better policies for people who want to buy insurance. I think that is a point that needs to be stressed.

SENATOR PRESSLY: Senator Dupont, would it be possible for this to be a part of a total package having to do with the insurance department that could be dealt with the first of next year?

SENATOR DUPONT: Senator, I don't think it is, because there is also a piece in this bill that was brought to us by the Insurance commissioner to deal with some problems that he sees before him at the present time. It deals with the specific issues about protecting the public that you are concerned with. I think the insurance committee did a great job on this and I think the necessary work has been put into it. I am confident that the protection for the public that you are concerned with does exist here. Quite frankly, I don't believe that at the present time it needs further study. I am comfortable with where it's at, at the present time.

SENATOR PRESSLY: Could you point out the language in here that references anything other than conversion?

SENATOR DUPONT: Senator Pressly, when you look at the first part of it, 402:G I, that runs, I think Senator Fraser may be able to address that a little bit better than I.

SENATOR PRESSLY: Point of clarification then. I believe that the only portion that is intended to be removed in this amendment is the conversion. It is my understanding that all of the other things that you are referencing remain. The only part that is being pulled out is in reference to conversion.

SENATOR DUPONT: Thank you, Senator. I just want to make it clear that I don't support your amendment.

Floor amendment failed.

Recess.

Out of recess.

SENATOR HOLLINGWORTH: I would like to add a further amendment to 339 or into the new economic package bill. It does not take out anything. It adds just one individual who has been injured by a defective product appointed by the fair access to the courts. This is what the policy committee moved to be included and we would ask that that be ought to pass.

Senator Hollingworth offered a floor amendment.

5327L

**Floor Amendment to SB 339**

Amend section 28 of the bill by inserting after paragraph XI the following new paragraph:

XII. One individual who has been injured by a defective product, appointed by Fair Access to the Courts.

SENATOR FRASER: Mr. President, as a supporter of the original bill, I support Senator Hollingworth's amendment.

SENATOR DUPONT: Mr. President, I rise in strong support of Senator Hollingworth's amendment. I would just like to add that I felt that the changes that the Judiciary committee made to the bill would enhance the bill. The only concern that we had was that we were trying to bring technical people onto the committee and we weren't sure that an injured victim would have the technical expertise to lend anything to the committee. If Judiciary and Senator Hollingworth feel more comfortable with having that person back on, I will support that.

Floor amendment adopted.

Recess.

Out of recess.

SENATOR COLANTUONO: That administrative agencies must give to those persons which it licenses or those who have license applications pending before the agency, a notice of any rule changes that are coming up and hearings about those rule changes. Now we had a lengthy hearing in the Executive Departments committee recently, and there was a lot of opposition to this bill. Now, the format that came out of the calendar here is not exactly the same as the House Bill. This format addresses some, but certainly not all of the concerns. When you add up all of the administrative agencies we have in this state and all of the thousands upon thousands of licensees around this state, there could be literally, costs in the thousands and maybe the millions of dollars to implement this. There wasn't an accurate fiscal note on the bill. Since we have had the hearing we have had several Senators working on the issue trying to come up with the best solution to this. Now this particular version, and I don't understand where this came from, because I don't think that there was a prior Senate Bill about this. But anyway, this particular version says that an agency has to send notice or give notice to all persons holding occupational licenses. It says that it must be done either by mail, agency bulletin or newsletter or public notice or advertisement in publications of general circulation or in such other matter deemed sufficient by the Joint Legislative committee on Ad-

ministrative Rules. They may decide that mail is required, we don't know. There is no control over that. You are giving them any option that they want and there could an incredible, incredible cost associated with this bill and we don't have a fiscal impact on it. We don't understand what it is going to do to our budget. Again, that is the merits. Getting to my other issue here today which is process, we had this bill in our Executive Departments policy committee, we should be given the opportunity to look at it and do our job. This bill has nothing to do with economic development, and there is no pressure in passing it today. My amendment simply proposes to take it out of this vehicle and let it go forward in the normal course in our committee.

Senator Colantuono offered a floor amendment.

**5328L**

### **Floor Amendment to SB 339**

Amend the bill by deleting sections 32 and 33 and renumbering section 34 to read as 32.

### **AMENDED ANALYSIS**

I. Section 1 of this bill is a general purpose statement.

II. Section 2 of this bill requires the superior court to submit a plan to the general court to establish a division to hear cases involving corporate and commercial matters.

III. Sections 3 and 4 of the bill establish an exemption from state securities registration requirements for securities issued by investment companies which are subject to regulation by the U.S. Securities and Exchange Commission and which have, by themselves or through their investment advisers, established a performance record in the mutual fund industry. New investment companies which do not meet the prior performance criteria must make the full registration filings with the state. Accordingly, the state retains full review authority with respect to these "untested" investment companies.

IV. Sections 5-26 of the bill allow mutual insurance companies organized under the laws of New Hampshire to convert into stock insurance companies, make changes in the insurance laws required by the National Association of Insurance Commissioners and establish a new chapter which regulates business transacted with producer controlled property/casualty insurance.

V. Section 27 of the bill requires the attorney general to adopt rules allowing "ULOR" securities offerings in this state. These securities offerings are exempt from federal registration and regulation under Rule 504 of Regulation D of the Securities and Exchange

Commission, and include offerings of up to \$1,000,000 per year. Small companies desiring to make such offerings would be required to file a Form ULOR-C form, which is designed to be used by companies whose lawyers and accountants are not necessarily specialists in securities laws.

VI. Sections 28-30 of the bill establish a committee to study the impact of New Hampshire's product liability laws on manufacturers in New Hampshire.

VII. Section 31 of this bill requires that the notice given by the agency include the date of the first agency public hearing and the cut off date for the submission of written materials to the agency.

SENATOR DUPONT: I'll own up to this one. This one is mine, Senator Colantuono. It is something that I brought to the committees' attention, and as a good conservative and one who believes in government interference being reduced to the minimum you should be able to support this. I think it's appalling that licenseholders, people that we take \$40, \$50, \$100 from to issue them a license, to find out about rules after they have been adopted by your committee, by the Administrative Rules committee, because they don't know the rules are being proposed. If all it takes is a 29 cent stamp to take someone that has given us \$100 for a license and notify them that a public hearing is going to be held, what is wrong with us? This makes government more accountable, not less accountable. It amazes me that we will stand here today and talk about doing stuff to make New Hampshire as a state a more positive place to do business in, when a guy that holds a plumbers license is trying to run a plumbing business, and Administrative Rules and agencies are over here adopting stuff that he doesn't even know about because nobody has bothered to tell him. So this is a fundamental issue about process, whether this government is going to be responsible to the citizens of this state. For us to stand here and talk about costs of millions of dollars, I don't know how many occupational licenses we have. Do we have 100,000 occupational licenses? At 29 cents per stamp to send out 100,000 licenses and that is if we issue rules on every single occupational license that exist out there. This is a great idea, if there is anything in this package that the people in this body that would consider themselves for antigovernment or government that should not take advantage of people and be as small as possible, this gets the average citizen back in here, saying what are you doing to me? This is a good piece of legislation and I think it is a mistake that we sit here and debate whether or not the state of New Hampshire ought to put a 29 cent stamp on a letter and send it to somebody who owns a license from this government to tell them that a hearing is going to be held that impacts their license. This amendment should

be defeated. I would hope that if there are additional concerns, Senator Currier does have a bill before his committee, but I think that we have answered some of the concerns of the agencies about this. This doesn't require them to put a stamp on an envelope, even though I think that they ought to. We ought to require them that they send a notice to a guy who holds a plumbers license or a woman who holds a plumbers license to say that we are changing things that impact your license. That should be a requirement and we shouldn't even be debating this today.

SENATOR HEATH: I was listening to Senator Dupont and I guess I felt compelled to rise. There is a little part of me that agrees that people whose livelihoods are being affected by rulemaking ought to be notified. That is theoretically a good idea. The problem is this: it is the responsibility of every citizen to pay attention to what we are doing, and I agree that most citizens pay too little attention to what we are doing. We wouldn't get away with what we get away with if they were really paying a little closer attention. We don't notify citizens in any other category when we are down here fooling with our livelihoods or with their fortunes, with their behaviors, other than notices in the papers. I wouldn't mind a requirement that a notice if there isn't such a requirement, that a notice of any hearing on rules be posted a couple weeks ahead of the change in rules. I agree with Senator Colantuono that this will be an enormous expense, and the expense will go back to the license holders, most of whom are earning a living with those licenses during the hours that those hearing are taking place, they can't come anyway. They would be paying for a notification to themselves that would be useless on that basis. But if I know any agency and I have been around here long enough to know most of them, the notice will be written in such a way as to disarm them of what really is going on or to confuse them or to obsequy the intention that is going to be taking place in the hearing. If we want to control rulemaking, we ought to stop writing bills that are simply titles, a little text about the idea in handing over all the rule-making authority to the bureaucracies to do as they please because they always do it to please the bureaucracy, not the clientele that the legislature set out to protect or to control. I side with Senator Colantuono on this and would urge you not to impose this burden of cost, and more paperwork, and more confusion and more opportunity for, I won't use that word, but for mischief on behalf of some of the agencies in the state. Thank you.

Floor amendment failed.

Ordered to third reading.

Senator Heath opposed to SB 339, but in favor of the floor amendments.

**SB 341**, an act relative to local industrial development authorities. Economic Development committee. Inexpedient to Legislate. Senator W. King for the committee.

**SENATOR W. KING:** The contents of SB 341 is found in SB 450 in the economic development package and we urge you to vote inexpedient to legislate on this matter.

**SENATOR OLESON:** This happens to be one of my bills that I entered which has more or less been included in SB 450 in the economic development package. I would like to rise in support of the committees recommendation of inexpedient to legislate, along with another one down the line which is SB 369, I believe. The way I understand it is that instead of trying to go and piecework on the economic development in New Hampshire, the idea is on the Senate Economic Development package, that we bring all the different ideas under one umbrella and come out with something that maybe most of us can support. While I am on my feet, Mr. President, Pro Tem, I would like to throw a couple of roses around here. I would like at the present time to have a minute or two of personal privilege.

**SENATOR OLESON (Rule #44):** I had a call from the President of the James River Corporation, Mr. Shank last week. According to him, one of the major reasons that James River has decided to stay in the state of New Hampshire and taken the 'for sale' signs down, is because of the actions that have been taken by the Senate, and I wish as the Senator from district #1 to thank each and everyone of you for that effort. I hate to pick out different individuals, but I will try to make it nonpartisan, because when they first came down last year, the one that promoted the idea that we should meet with the committee, and that meant the President of James River along with people like Eli Issacson, was Senator Blaisdell. We had such a meeting to insure these people that anything within reason, we would be more than glad to give them help. The next I would like to throw a bouquet to is our good President of the Senate, Senator Dupont. A couple of weeks ago we had a meeting in Berlin on industrial development and Mr. Dupont took his valuable time to attend, to reassure the people in the north country that everything within reason would be done in the Senate. I would like to repeat again, one of the major reasons because of Mr. Shank(?) a determination has been made to keep this major industry in New Hampshire and that is because of large major efforts by the Senate, and I am talking about each and



everyone of you. So I thank you, the company thanks you, the county thanks you, the people thank you. Thank you very much, Mr. President.

Committee Report of Inexpedient to Legislate is Adopted.

**SB 347-L**, an act expanding the role of the Dover Industrial Development Authority. Economic Development committee. Inexpedient to Legislate. Senator Bass for the committee.

SENATOR BASS: Mr. President, the substance of SB 347 is contained in SB 430. The committee urges your adoption of the committee report of inexpedient to legislate.

Committee Report of Inexpedient to Legislate is Adopted.

**SB 354**, an act to create a government council on economic transition. Economic Development committee. Inexpedient to Legislate. Senator Bass for the committee.

SENATOR BASS: This bill, although well intentioned, gave rise to concerns in the private sector with respect to the problem of being able to keep proprietary documents and other items pertaining to that, properly confidential. The committee has recommended that this bill be reported inexpedient to legislate.

SENATOR W. KING: I am not going to say more to pass this bill, but I did want to take just a moment to say a couple of things about it. The Chief proponent of this bill was the Nashua Chamber of Commerce and Industry, representing extensively businesses in the Nashua area. I suspect when things hit the fan in a few years as we begin to lower the amount of spending on defense, that we will have them back here asking us to help them figure out a way to speed up conversion from defense capacity to civilian capacity. Right now they seem to think that it is none of our business to aid smaller businesses, particularly those suppliers of businesses like Sanders, in terms of giving them some advice on how to convert from defense capacity to civilian capacity. Ten percent of the jobs in the state of New Hampshire are related to the defense industry. If, as President Bush has suggested and certainly as others have suggested, we will have major cuts in the military budget in the next few years, we are going to see a lot less defense dollars flowing to the state of New Hampshire and we ought to be doing something to help these businesses figure out how to convert from defense capacity to civilian capacity. I would hope that in the coming year we will begin to do what most other states have already done and that is to take a look at this issue and to make a genuine effort at doing something about it.

Committee Report of Inexpedient to Legislate is Adopted.

**SB 358**, an act relative to the industrial development authority study committee. Economic Development committee. Inexpedient to Legislate. Senator Bass for the committee.

SENATOR BASS: Mr. President, the substance of SB 358 has been made a part of SB 450. The committee urges the Senates adoption of the committee report of inexpedient to legislate.

Committee Report of Inexpedient to Legislate is Adopted.

**SB 364-FN-A**, an act establishing an inventor assistance program and continually appropriating a revolving fund. Economic Development committee. Inexpedient to Legislate. Senator W. King for the committee.

SENATOR W. KING: The contents of SB 364 have already been passed in the form of SB 304.

Committee Report Adopted.

**SB 366-FN**, an act enabling the retirement system board of trustees to invest retirement system assets in participation with commercial entities licensed by the small business administration. Economic Development committee. Inexpedient to Legislate. Senator W. King for the committee.

SENATOR W. KING: The contents of this bill are weakened and found in SB 450.

SENATOR BASS: Senator King, I just wanted to make sure that you believe that the contents of this bill are substantially weakened and weakened enough so that it really won't have any effect at all except to send a very weak message to the Retirement Board?

SENATOR W. KING: I would hope that it would send a strong message to the Retirement Board, particularly, where it pertains to the recommendations of Mount Auburn Associates in the area of creating a secondary market for community development corporations in the state of New Hampshire and the IDA so that the retirement system could look at a package acting as a secondary market in purchase packages of loans, that in many cases will be fully guaranteed by other agencies so that they can put more capital into the marketplace in New Hampshire.

SENATOR NELSON: Senator King, if it's so weak and sending a weak message as my colleague from Peterborough suggests, what is the sense in passing it, and the second part of the question is, is it not within the purview of the retirement board to be able to do that now, if after looking at it carefully they see fit?

SENATOR W. KING: First of all, Senator Nelson, let me say that I would not agree with Senator Bass that it is so weakened. The idea

is certainly to merely put us on record as we went on record a couple of weeks ago when we passed this bill in the Senate. Yes, we passed this bill and it was overturned on the floor . . . as we did before, saying that we would like the retirement system to invest in New Hampshire's businesses, given the fact that there were almost no investments made in New Hampshire businesses today by the retirement system. The major point here though, is that since we took that action, we have taken action on the recommendation on the Mount Auburn Associates on the Industrial Development Authority which said that the retirement system could act as a very important secondary marketplace for loans that were already made by other community development corporations or by the IDA to free up more money on loans that would be relatively safe, because most of the loans were guaranteed already by another entity.

SENATOR NELSON: Let me rephrase my question, I didn't do well at that, initially, evidently. Is it within the purview of the retirement board system, working with their experts to invest now in the state of New Hampshire. Is it not within their purview, and if that is the case, then why do you need the legislation?

SENATOR W. KING: Because they are not doing it and we believe that they should be.

SENATOR DUPONT: I was going to mention this a little bit later on, but because Senator Nelson has raised it, I just want to comment on the issue of the Industrial Development Authority and what we are going to be proposing a little later on, and why this piece is important. In the report from Mount Auburn Associates, what it said basically, was the IDA lacks sufficient liquid resources to initiate new programs, and at the same time the state is fiscally strapped, and there is little revenue for new program initiatives. They outlined a number of different resources that we could go to. What one of the other revenue sources that they specifically targeted was the state pension fund. What they said is that in other states it has been used as an effective tool as economic development. In Colorado, specifically, buying fixed rate long term loans to businesses which, I assume, would be some in Nashua. It also spoke about Oregon and in Arkansas. So basically, I think all the Economic Development committee was trying to say is that given the fiscal constraints that the state faces, the lack of resources, that if they are prudent investments and even though we know they can do it now, that they ought to consider this as one of the roles that they can play, because a healthier state benefits all of the retirees that are going to ultimately, use the retirement system and continue to have New Hampshire as their retirement home.

SENATOR NELSON: Senator Dupont, thank you as usual for jumping up and mentioning the use of pension as a financing leverage for corporations. Would you repeat that again about the pension. I don't care if they are in Nashua, Portsmouth, Pease Air Force or in Rumney, let's get this new concept of pensions, because I haven't heard this and I appreciate you being so well informed to tell me.

SENATOR DUPONT: Senator, all that I am saying is that as we are all reaching for the limited pools of resources to try and help the small businesses of the state: that if there exists an entity in state government that could play a role, that we ought to try and utilize them. I think that we would all like to see the trustees of the retirement system make an attempt to try and participate with us in some of these innovative financing programs that we are trying to put in place. Quite frankly, we don't have the resources to fix the capital problem that we have in the state of New Hampshire. Even the things that we are going to do today, aren't going to help enough so that we are not going to be continually getting phone calls from businesses who can't borrow money. If it's out there we ought to try and use it. I think that is all that we are saying when you put this in there. I personally am going to request of the trustees that we set up a meeting. Maybe with the Economic Development committee, maybe it ought to be with the whole Senate. At least sit down and talk about this concept and try to get the trustees interested in participating in this project.

SENATOR NELSON: Senator Dupont, in all due respect and the most humility that I can gather up here . . . I just want to make sure that we are not using euphemistic terms like creative, potential, financing help for economic problems, when in fact, we don't want to be talking about successfully raiding of pension funds. I want to have some assurance that this creative euphemistic language that you are using is not pension raiding or something along those lines.

SENATOR DUPONT: Senator Nelson, let me just say that the role that we would envision for the IDA would be a purchaser of packages of loans that would be guaranteed by the good faith and the credit of the state of New Hampshire. What we are saying is that there is no risk, but we need a place to put these business loans and free up some more capital so that we can go out and lend. That is the road that we seek. If there is anything that the trustees would do that would not preserve the integrity of the retirement system, we would not want them to do it. But we think very strongly that there is a role for them to play in helping the businesses of the state of New Hampshire and we would like them to get involved in exploring that alternative.

Committee Report of Inexpedient to Legislate is Adopted.

**SB 369**, an act enabling municipalities to grant property tax incentives to new and expanding businesses and industries in the community. Economic Development committee. Inexpedient to Legislate. Senator Bass for the committee.

**SENATOR BASS:** Mr. President, the subject matter of SB 369 is addressed in SB 366 and the committee urges your adoption of the committee report of inexpedient to legislate.

Committee Report of Inexpedient to Legislate is Adopted.

**SB 373**, an act allowing the filing of the ULOR-C form for Rule 504 securities offerings in New Hampshire. Economic Development committee. Inexpedient to Legislate. Senator W. King for the committee.

**SENATOR W. KING:** The contents of this bill are found in SB 339 in the economic package.

Committee Report of Inexpedient to Legislate is Adopted.

**SB 393**, an act creating a committee to study the feasibility of locating a college in Haverhill, New Hampshire. Economic Development committee. Ought To Pass With Amendment. Senator Shaheen for the committee.

**5279L**

### **Amendment to SB 393**

Amend the title of the bill by replacing it with the following:

#### **AN ACT**

relative to infrastructure development and  
making appropriations therefor.

Amend the bill by replacing all after the enacting clause with the following:

#### **1 Statement of Purpose Regarding Infrastructure Development.**

I. The general court finds that public policies are urgently required to restore the strength and sustain the growth of the economy in order to increase the prosperity and enhance the opportunities of the people of New Hampshire. The general court finds that such public policies must be pursued in a coherent, consistent and comprehensive manner both to meet the immediate challenges and to serve the future interests of the state and its people. The general court also finds that measures to further capital formation, regulatory reform, business assistance, infrastructure develop-

ment and strategic planning are legitimate, necessary and timely priorities for legislative initiatives. Therefore, the general court has addressed these aspects of public policy in 4 acts which together represent a program to revive and sustain economic growth in New Hampshire.

II. The general court finds that improvement, expansion, and development of the physical infrastructure of the state and the municipalities is necessary to promote and sustain economic activity in its state and its regions. In particular, the general court finds that expansion of the port of New Hampshire and investment at Pease Air Force Base should be undertaken in a timely manner in order to accelerate development of these important facilities.

2 Committee Established. There is hereby established a committee to study the feasibility of constructing a technical college in Haverhill, New Hampshire. The committee shall consist of the following members:

I. Two senators, appointed by the president of the senate.

II. Two house members, appointed by the speaker of the house.

III. The commissioner of postsecondary education, or his designee.

IV. A selectman from Haverhill, chosen by the selectmen.

V. A member of the public, appointed by the governor.

3 Meetings; Compensation. The committee shall choose a chairperson from among its members. The members of the committee shall serve without compensation, except that the legislative members shall receive mileage at the legislative rate when attending to the duties of the committee. The first house appointed member shall call the first meeting prior to July 15, 1992.

4 Report. The committee shall make a report on the feasibility of locating a technical college in Haverhill, New Hampshire and submit its recommendations for improvements or changes to the governor, the speaker of the house, the president of the senate and the Haverhill selectmen, on or before November 1, 1992.

5 Statement of Purpose. The closure of Pease Air Force base has presented the seacoast and the state of New Hampshire with a significant opportunity. Successful development of the facility must consider the needs and concerns of the communities in which it is located while providing the vision needed to attract business and industry. Sections 6-18 of this act are intended to aid in the successful economic development of the Pease facility.

6 Approval of Municipality Required. Amend RSA 12-G:2, I(b) to read as follows:

(b) Property conveyed, granted or otherwise transferred to the authority by the federal government or any agency thereof and declared or designated by the authority as the "airport district" in ac-

cordance with the procedures prescribed in RSA 12-G:10, II **after the expansion or contraction of the district has been approved by the governing body of the municipality in which the land sought to be added to or taken from the airport district is located.**

7 New Section; Financial Disclosure Required. Amend RSA 12-G by inserting after section 4 the following new section:

12-G:4-a Statements of Financial Interests; Content; Form.

I. Every member of the board shall file by July 1 of each year a verified written statement of financial interests in accordance with the provisions of this section, unless he has already filed a statement in that calendar year.

II. A member of the board shall not be allowed to enter into or continue his duties, unless he has filed a statement of financial interests with the secretary of state.

III. Statements of financial interests shall contain the following information:

(a) The name, address, and type of any professional, business, or other organization in which the reporting individual was an officer, director, associate, partner, proprietor, or employee, or served in any other professional or advisory capacity, and from which any income in excess of \$10,000 was derived during the preceding calendar year.

(b) The identity of any capital asset, including the address or legal description of real estate, from which the reporting individual realized a capital gain of \$5,000 or more in the preceding calendar year other than the sale of the reporting individual's principal place of residence.

(c) The name of any political subdivision, other than the state, which employed the reporting individual during the preceding calendar year.

(d) The name of any person from whom the reporting individual received during the preceding calendar year one or more gifts or honoraria having an aggregate value in excess of \$100, but not including gifts from relatives.

(e) The business name and nature of ownership in any person conducting business in the state in which the reporting individual had a financial interest during the preceding calendar year. Ownership interests in publicly held corporations need not be disclosed.

(f) The identity of any financial interest in real estate located in the state, other than the principal place of residence of the reporting individual, and the address or, if none, the legal description of the real estate, including all forms of direct or indirect ownership such as partnerships or trusts of which the corpus consists primarily of real estate.

(g) The description of any debt and the name of the creditor for all debts in excess of \$5,000 owed by the reporting individual, as well as the description of any debt and the name of the debtor for all debts in excess of \$5,000 owed to the reporting individual, but only if the creditor or debtor, respectively, or any guarantor of the debt, has done work for or business with the state in the preceding calendar year. Loans issued by financial institutions whose normal business includes the making of loans of the kind received by the reporting individual, and which are made at the prevailing rate of interest and in accordance with other terms and conditions standard for such loans at the time the debt was contracted need not be disclosed. Debt issued by publicly held corporations and purchased by the reporting individual on the open market at the price available to the public need not be disclosed.

IV. The statement of financial interests shall be completed by typewriting or hand printing, and shall be verified, dated, and signed by the reporting individual personally. It shall be submitted on a form prescribed by the secretary of state.

8 Requests for Proposal Required. Amend RSA 12-G:7, VIII to read as follows:

VIII. To make and execute agreements, contracts and other instruments necessary or convenient in the exercise of the powers and functions of the authority under this chapter, including contracts with any person, firm, corporation, municipality, state agency, governmental unit, or other entity, foreign or domestic, **provided that any member who proposes a no bid situation shall prepare a finding as to why the request for proposal is not to be used and such no bid situation shall require unanimous approval; otherwise major contracts shall require requests for proposals.**

9 Land Use Controls. RSA 12-G:10, V is repealed and reenacted to read as follows:

V. With the exception of the airport zone and that portion of the airport industrial zone acquired by the Pease development authority pursuant to Surplus Property Act of 1944, section 13-G, in the enforcement of land use controls, the following shall apply:

(a) The authority shall delegate enforcement of the land use controls to the appropriate land use boards of the town of Newington and the city of Portsmouth for property within each municipality, respectively.

(b) If the town of Newington or the city of Portsmouth, as appropriate, rejects the enforcement on the basis of Part I, Art. 28-a of the New Hampshire constitution, the authority may delegate such enforcement to the community which did not reject it or to another community. If the town of Newington and/or the city of Portsmouth elects to perform said enforcement, the building inspection services,



zoning enforcement services, and planning services of Portsmouth and/or Newington shall be made available to the authority for all land within the authority's control. In addition, the building code boards of appeal, the zoning boards of adjustment and the planning boards of the respective municipalities shall process building code appeals, administrative appeals, special exception and variance requests, as well as subdivision, site plan review and conditional use applications. The only charge that may be made for such services shall be the standard application fees charged by the municipalities for local permits.

(c) In all instances, the authority shall retain the power to make the final decision regarding applicability, interpretation, and enforcement of its land use controls, which shall require 5 affirmative votes.

(d) Any action of the authority in the exercise of its powers under this section shall be subject to a motion for rehearing and appeal in accordance with the appropriate provisions of RSA 677. In addition to any other person deemed to be an aggrieved person, the city of Portsmouth and the town of Newington and any abutters shall have standing to appeal land use decisions made by the authority.

(e) Any property located at the former Pease Air Force Base which is sold, leased or otherwise conveyed by the United States government to any person other than the state of New Hampshire or one of its political subdivisions shall be in full compliance with all applicable municipal land use regulations, building codes, electrical codes, plumbing codes and related codes prior to being occupied for any use by any person.

10 New Section; Exclusion for Military Bases. Amend RSA 33 by inserting after section 6-b the following new section:

33:6-c Exclusion from Debt Limit. Any municipality which has voted to acquire land from a United States military base may incur debt by the issuance of bonds or notes beyond the limit of indebtedness as set forth in RSA 33:4, provided that the purpose of the acquisition is to further the economic development of the municipality. Such debt shall at no time be included in the net indebtedness of the municipality for the purpose of ascertaining its borrowing capacity.

11 Committee Established.

I. There is established a committee to conduct a nationwide search for a chief executive officer who will act on behalf of and at the direction of the Pease development authority. The membership of the committee shall be as follows:

- (a) A member appointed by the governor.
- (b) A member appointed by the president of the senate.
- (c) A member appointed by the speaker of the house.

(d) A member appointed by the Portsmouth city council.

(e) A member appointed by the Newington board of selectmen.

(f) A member appointed by the chairman of the Pease development authority.

(g) A member appointed by the Strafford county delegation, from Strafford county, who has a background in economic development.

(h) A member appointed by the president of the University of New Hampshire.

II.(a) The committee shall conduct a nationwide search for a chief executive officer who shall have sufficient experience in airport and industrial development to guide and direct the authority in its mission. The search committee shall draw upon the talents of the state division of personnel and the university of New Hampshire in developing the specific criteria for the qualifications of the chief executive officer.

(b) The Pease development authority shall negotiate the specific terms and conditions of the chief executive officer's contract, and the term of the position shall not exceed 5 years.

III. The committee shall commence its work by January 1, 1993, and complete its work and present its recommendations relative to the 3 finalists it has selected to serve as chief executive officer to the Pease development authority by July 1, 1993. The authority shall fill the position after July 1, 1993.

12 Appointment of Chief Executive Officer. The chief executive officer selected by the authority under section 11 of this act shall be appointed by the board of directors appointed after July 1, 1993.

13 Appropriation. The sum of \$10,000 for the fiscal year ending June 30, 1993, is hereby appropriated to the search committee established in section 11 of this act for the purpose of conducting the nationwide search. The governor is authorized to draw his warrant for said sum out of any money in the treasury not otherwise appropriated.

14 Chief Executive Officer; Chief Operating Officer. Amend RSA 12-G:4, VI to read as follows:

VI. The board shall appoint [an executive director, who shall be the chief executive and administrative] **a chief executive officer** of the authority [and] who shall have general and active supervision and direction over the day-to-day business and affairs of the authority and its officers and employees, subject, however, to the direction and control of the board. **The chief executive officer shall have sufficient experience in airport and industrial development.** The [executive director] **chief executive officer** shall perform all such other duties as from time to time may be assigned to him by the board. The [executive director] **chief executive officer** shall hold

office for [an indefinite term at the pleasure of the board] **a term not to exceed 5 years.** The [executive director] **chief executive officer** shall also be the secretary of the authority, shall keep a record of the proceedings of the authority, and shall be the custodian of all books, documents, and papers filed with the authority and of its minute book and seal. He shall have the power to cause copies to be made of all minutes and other records and documents of the authority and to give certificates under the seal of the authority to the effect that such copies are true copies, and all persons dealing with the authority may rely upon such certificates. The [executive director] **chief executive officer** may employ such assistants, legal counsel, clerical and administrative staff as directed by the board and within limits of funds available for that purpose. The [executive director] **chief executive officer** may from time to time, with the prior consent of the board, establish and maintain such operating divisions within the authority as he shall deem necessary for the proper and efficient conduct of business under this chapter and may assign such staff members to any such division. The salary of the [executive director] **chief executive officer** shall be established by the board.

**VII. The board, with the recommendation of the chief executive officer, shall appoint a chief operating officer who shall serve at the pleasure of the board. The chief operating officer shall perform such duties as the chief executive officer deems appropriate and necessary.**

15 Committee Established; Meetings; Report.

I. There is hereby established a committee to study the feasibility of establishing a research facility, in conjunction with the university system of New Hampshire, on the site of the former Pease Air Force Base. If established, such a facility shall be used for research in advanced science and technology. The committee shall study issues, including, but not limited to, private funding participation, location of the center, federal participation, and enhancement of research activities.

II. The committee members shall be as follows:

(a) Three members of the senate, appointed by the president of the senate.

(b) Three members of the house of representatives, appointed by the speaker of the house.

III. The committee shall conduct its first meeting within 30 days after the effective date of this section. At the first meeting a chair shall be chosen from among the members of the committee.

IV. The committee shall submit a report, including recommendations for legislation, to the senate president, and the speaker of the house on or before November 1, 1992.

V. The members of the committee shall receive mileage at the legislative rate.

16 Appropriation. The sum of \$25,000,000 is hereby appropriated to the university of New Hampshire for the purpose of establishing a research facility on the site of Pease Air Force Base to be used for research in advanced science and technology.

17 Bonds Authorized. To provide funds for the appropriation made in section 16 of this act, the state treasurer is hereby authorized to borrow upon the credit of the state not exceeding the sum of \$25,000,000 and for said purpose may issue bonds and notes in the name of and on behalf of the state of New Hampshire in accordance with RSA 6-A. Payments of principal and interest of the bonds and notes shall be made from the general funds of the state. The bonds shall be 10-year bonds.

18 Applicability. The funds appropriated under section 16 of this act shall not be spent, obligated, or encumbered until the study committee established under section 15 of this act has submitted its report to the senate president and the speaker of the house, and such report has recommended the establishment of such a research facility, and until legislation establishing the research facility has been approved by the general court.

19 Purpose. In enacting sections 20-30 of this act, the general court finds that expansion of the port of New Hampshire shall contribute significantly to the transportation network of the state and increase the commercial opportunities of its businesses. The general court further finds that expansion should be undertaken in a timely manner in order to generate employment and income in the construction industry. The purpose of such expansion is to generate new commerce. The port shall not engage in the handling of cargos presently served by existing private sector port facilities on the Piscataqua River.

20 Terms Deleted. Amend 1991, 351:5 to read as follows:

351:5 Appropriation; Port Authority - Self Liquidating From Revenue. The sums hereinafter detailed are hereby appropriated for the projects specified:

A. Port of Portsmouth expansion	\$16,500,000
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Total state appropriation section 5	\$16,500,000
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[(The funds appropriated in subparagraph A for the Port of Portsmouth expansion shall not be expended, encumbered, or obligated in any way unless: (1) the study committee established in 1991, 145, on the New Hampshire port authority submits its report which concludes that the Port of Portsmouth expansion is economically feasible, such that projected revenues exceed projected expenditures; and (2) an action plan, which shall include construction documents, prepared by the New Hampshire port authority shall be approved

by the capital budget oversight committee, the fiscal committee and the governor and council. The action plan shall include the identification of sufficient revenue sources to amortize both the annual principal and interest payments.))

21 Requests for Proposals; Port Expansion. The expansion of the port of Portsmouth funded in section 20 of this act shall include an 11 acre expansion of the north yard of the port and the construction of a 750-foot pier. Prior to submitting contracts to the governor and council for final authorization, the port authority shall send out requests for proposals, which shall include finished construction documents and permits, to determine whether there is private funding available to fund the construction of improvements at the port site.

22 Payment in Lieu of Taxes; Gross Revenues of the Port. Amend RSA 271-A:17 to read as follows:

271-A:17 Payments in Lieu of Taxes.

I. The property of the authority is declared to be public property and shall be exempt from all taxes and special assessments of the state or any political subdivision thereof; provided that in lieu of such taxes the authority shall make payments to the city of Portsmouth in the amount of \$30,000 annually for the tax year commencing April 1, 1975, and each subsequent tax year for highway maintenance, fire protection or other services, **until April 1, 1994, when the amount shall be \$48,000. Thereafter, the latter amount shall be adjusted in accordance with the percentage change in the Consumer Price Index as of the close of the 12-month period ending August 31 of each tax year.**

II. Upon leasing or renting by the authority of any property to a non-governmental person for any non-governmental use, the authority shall be taxed by the municipality in which the property is located as though the leased premises were not owned by the authority. This provision shall not apply to property owned by the authority prior to July 1, 1991.

III. In any year after January 1, 1994, in which the authority receives annual revenues in excess of \$1,000,000, the authority shall pay to the city of Portsmouth an amount equal to 1 percent of all funds deposited under RSA 271-A:18 in excess of \$500,000. For any year in which payment is made under this section, there shall be no payment made to the city of Portsmouth as required under RSA 271-A:17, I. For purposes of calculating amounts owed under this section, deposit balances shall be established as of April 1, and payment shall be made by year end.

23 New Section; Money Deposited. Amend RSA 271-A by inserting after section 17 the following new section:

271-A:18 Deposits. All money from the authority, from whatever source derived, except state appropriations, shall be paid to the treasurer of the authority.

24 New Subdivision; Wage and Residency Requirements. Amend RSA 271-A by inserting after section 18 the following new subdivision:

### **Wage and Residency Requirements**

271-A:19 Funding of Construction Projects.

I. Any construction project at the port of Portsmouth which is funded through the New Hampshire port authority or the state of New Hampshire shall employ New Hampshire residents for at least 50 percent of the total employee hours in each trade. Employee hours shall include work performed by persons in apprenticeship positions.

II. For the purposes of this subdivision, "resident" shall mean any person maintaining a dwelling within the state of New Hampshire who has a present intent to remain within the state for a period of time.

271-A:20 Contracts. Any contract or bid specification relating to construction at the port of Portsmouth shall contain a residency provision as provided in RSA 271-A:19.

271-A:21 Bids, Salaries. The port authority shall require that all bidders on construction projects at the port shall base wages paid on area standards established by the most recent United States Department of Labor Wage Survey for Rockingham county, New Hampshire.

271-A:22 Enforcement and Compliance. The New Hampshire port authority shall enforce the residency requirements provided in RSA 271-A:19. The authority shall also be responsible for the following:

I. Reviewing spending plans for each project.

II. Identifying the number of jobs that each project will create.

III. Requiring all contractors and subcontractors to submit weekly reports that list each worker's name, residence, craft, job category and hours worked.

271-A:23 Fines. Any person who knowingly violates any provision of this subdivision shall be guilty of a violation and, notwithstanding RSA 651:2, shall be subject to a fine of not more than \$500.

25 Special Committee Established. There is hereby established a special committee to establish criteria for the merger of the Pease development authority and the port authority.

26 Membership. The committee members shall be as follows:

I. Two members of the senate, appointed by the president of the senate.

II. Two members of the house of representatives, appointed by the speaker of the house.

III. Two members appointed by the governor, representing the port authority and the Pease development authority.

IV. One person from the city of Portsmouth and one person from the town of Newington, each appointed by the governing body of each community.

27 Meetings. The committee shall conduct its first meeting within 30 days after the effective date of this section. At the first meeting, a chair shall be chosen from among the members of the committee.

28 Report. The committee shall submit a report, including recommendations for legislation to the senate president, the speaker of the house and the governor, no later than November 1, 1992.

29 Appropriation; New Hampshire Port Authority. There is hereby appropriated to the New Hampshire port authority the sum of \$1,500,000 for the purposes of engineering studies, design work and approval processes.

30 Bonds Authorized. To provide funds for the appropriation made in section 29 of this act, the state treasurer is hereby authorized to borrow upon the credit of the state not exceeding the sum of \$1,500,000 and for said purpose may issue bonds and notes in the name and on behalf of the state of New Hampshire in accordance with the provisions of RSA 6-A. The payment of principal and interest on such bonds and notes shall be made when due from the general funds of the state. The bonds shall be 10-year bonds.

31 Effective Date. This act shall take effect 60 days after its passage.

### AMENDED ANALYSIS

I. Section 1 is a general purpose statement.

II. Sections 2-4 establish a committee to evaluate the feasibility of establishing a technical college in Haverhill, New Hampshire.

III. Sections 5-18:

(1) Require approval by the affected municipality before expansion or contraction of an airport district.

(2) Require board members to file a financial disclosure statement with the secretary of state.

(3) Mandate that the board use requests for proposals for contracts unless a no bid process is approved in a finding prepared by the member proposing such process.

(4) Authorize borrowing by a municipality for the acquisition of land from a former United States military base to be excluded from the municipality's debt limit.

(5) Establish a committee to search for a chief executive officer to manage the daily operation of the Pease development authority and makes an appropriation to the committee to fund the search.

(6) Clarify local jurisdiction with respect to land use control issues.

(7) Establish a committee to determine the feasibility of establishing a research facility, in conjunction with the university system of New Hampshire, at former Pease Air Force Base.

(8) Make a contingent bonded appropriation to the university system of New Hampshire for such research facility.

IV. Sections 19-30 release money appropriated for the expansion of the port of New Hampshire. Under current law, the release of such funds is subject to certain conditions.

Prior to governor and council approval for the expenditure, the port authority is required to send out requests for proposals to determine whether private funding is available for construction improvements.

These sections establish wage and residency requirements for port authority construction projects.

These sections also establish a special committee to establish criteria for the merger of the Pease development authority and the port authority. The committee shall submit a report, including recommendations for legislation to the senate president, the speaker of the house and the governor, no later than November 1, 1992.

A bonded appropriation is made to the port authority for engineering, design and approval purposes.

SENATOR SHAHEEN: This is really package number three of the economic development packages that are coming out today. Fortunately, half of the Senate is missing, so hopefully, we will be able to discuss this one fairly quickly. As I said, this is the piece that deals with infrastructure. The first part of it is the bill that we have seen before which establishes a committee to study the feasibility of putting a technical college in Haverill. The second piece of it deals with the Pease Development Authority, my favorite subject, and we have also seen this piece before. This sets up financial disclosure for PDA members. It requires an RFP process. It puts into legislation, land use controls that have already been agreed to by the PDA and the local communities. The new piece of that Pease legislation that we saw earlier in the Senate which set up a search committee to hire a new chief executive officer to take over the further development of the base and that person would be hired in July of 1993 when the new appointments to the PDA Board are made. I think this piece is



one that could go a long way towards providing development at Pease that would insure the kind of high tech, good jobs, that we would all like to see there that would give us an opportunity to go out and do a nationwide search to find somebody who has some expertise in the area of airport and industrial development. The third piece of the package involves the expansion of the port. As you remember last year in the Capital Budget there was \$16,000,000 bonded for an expansion at the port and 11 acre expansion of the north yard and an additional 750' pier. That money was contingent on the approval of a study committee which met throughout the summer and fall. Senator Dupont, Senator Cohen and I were members of that committee. The committee in the fall approved the \$16,000,000 expansion and the piece that is in the bill would allow immediate bond on the \$1,500,000 to begin engineering, design and approval work that has to be done immediately to get the expansion in the pipeline. It also allows the tax exemption piece for Portsmouth and it provides for a requirement that half of the people hired to work on the expansion must be from New Hampshire. Now the fourth piece of this package, which I have saved till last, because I think, that it is the best part. It sets up a study committee to look at the feasibility of establishing a center for advanced science and technology at Pease. There is a \$25,000,000 bonding appropriation which is attached, which could only be spent upon a favorable report of that committee. It is essentially, what we did with the Port project. As I said, I think that this is the most exciting thing that is coming out of Economic Development this year, because I think that this could provide the catalyst at Pease for a whole new sector of jobs in the state. You should all have in front of you a letter from Dale Nitzschke, who is the President at UNH, addressed to Senator Dupont. Attached to that letter is an outline of the proposal for the center. It is really based on the idea of transferring the earth, oceans, and space center, that currently is housed at UNH, to a facility at Pease. Most of you probably remember the EOS, gamma ray observatory which went up last spring, they have been working with a NASA grant to manage the largest data satellite in the world. The technology that is going on right now at UNH is not only known throughout the United States, but also throughout the world. They are currently turning world reknown scientists away from that facility, because they don't have room to put them. The earth, oceans and space center which was established back in 1985 and 1990 brought in \$11,000,000 to the university. In 1991 it brought it in \$15,000,000 with an expenditure of only \$1,400,000. That is a 37 percent growth rate. As I said, they are working on the cutting edge of technology in the areas of space research, environmental remediation and research computing. We look at where the transfer of jobs is going to

be made from the defense industry into the Pease jobs of the future. It is going to be in the areas where UNH is doing that research. We are entering the information age and the management of that data is the technology of the future. We need to get in on the ground floor, and this research center at Pease would allow us to do that. I know that there are those who would argue that we shouldn't go forward with a project like this; and that we should wait for Deutsche Airbus and see what they are going to do, and that the state can't afford this kind of an expenditure. I would argue that this is just the kind of investment that we should be making in New Hampshire. That this kind of center would provide a magnet to attract the kind of private sector companies that we need for the future and that if we want to compete in the jobs of tomorrow, we have to be willing to make the kind of investment that is going to allow us to do that and this research center is the way to go.

SENATOR NELSON: Senator Dupont, I would like to obviously, commend the Economic Development committee for doing so much work. As I always have stood to talk about the Pease Authority and everyone wants to talk about how important it is to the state, I would just like to reiterate that point and ask Senator Dupont, could you talk about the impact of a project in the Pease, the impact of that project, if you will, the \$25,000,000, the golden triangle and perhaps the northern part of the state?

SENATOR DUPONT: Senator Nelson, you have to understand that these infrastructure investments, we did one for Manchester and we were guaranteed bonds for the Manchester Airport, and we said that that was good for the whole state of New Hampshire, it is good for the people in Nashua that travel to Manchester, it is good for the people in Manchester, it is good for the people who live in Nashua and work at the airport in Manchester. The key component of what we are talking about really is the division of having a research facility at UNH and what does that do? We have a number of companies in this state that are involved in these large scale projects. Digital equipment supplies the computerization equipment for UNH, Sanders, all of those companies will look at this and say that the state of New Hampshire is serious about doing research. There is an economic benefit having a facility like this in the state. I think that you will find that even though we are not going to spend the money, we can't spend the money until the study is done, that you will see companies coming to the state of New Hampshire and expressing an interest in participating in this center, because of the type of research that will be done there. I have spent the better part of a day at UNH, at the present facility and I will tell you that I came away from there extremely impressed, impressed not only with the re-

search that is going on over there, but the involvement of the private sector. All of the major computer companies have made an investment in a lab over there called Interpretability which deals with the communications between different types of computers. Companies from all over the country go there to have their research done. There is talk about building a super computing center at UNH that would allow Dartmouth, businesses in the state, all of the different entities that do research, to have access to the type of computer facility that is only available in 10 other places in the country. It would require the private sector to come in and help fund that. Digital is one of the companies that is leading the charge to build that center. The Governor's been involved in that, DRED's been involved in it, the institutions Dartmouth, UNH have been involved in it and this is the type of thing that we are talking about fostering. Can I tell you today that I think that this will be built? I don't know because there is still some significant issues that need to be dealt with. But the commitment ought to be there that would look at doing it, come back next year with the report and see if it makes sense. I think that you will find that there will be a significant number of companies from all over the state that will come forward on this thing and talk about the benefits of doing it.

SENATOR NELSON: Senator Dupont, thank you very much . . .

SENATOR DUPONT: Hey, I am starting to sound like Ralph Hough.

SENATOR NELSON: No, I think that you are doing great. So if I hear you correctly, sir, what you are saying is that there will be equal access to all parts of the state, it just might be located there due to the proximity of the university system, but every area of the state, all businesses will have access?

SENATOR DUPONT: That is correct, Senator.

SENATOR BASS: Senator Dupont, is it not true that section #18 which is the applicability section, requires that first of all the study committee submit the report, but secondly, before any funds at all are expended, legislation must be passed which would establish the research facility and that legislation would go through the appropriate committees and therefore, there would be opportunity in the future for this body to take a very close look at the specifics?

SENATOR DUPONT: Senator, this appropriation cannot be spent by the authorization in this act. I think that there is also a hope on the part of the committee as you know, that as we look at this that there may be private sector involvement in this facility that may reduce the amount of money that is necessary to build it.

SENATOR PODLES: Senator Dupont, I am kind of confused here. There seems to be a significant change in this Pease Development Authority. I thought that we had that straightened out. Could you help me to understand what is happening? They're now in the process of looking for a Chief Executive Officer and then employing other assistance, legal counsel and so forth, and could you explain a little bit on that to help me understand what is happening here?

SENATOR DUPONT: Sure, Senator. I can remember back to a debate that we had on this floor where I stood and worked hard against, I think the first tough debate that Senator Shaheen had when she came into this body and that was the PDA. There was a major piece of legislation before us that would have expanded the size of the PDA. I believe that that was part of it. It also set up a 30 member advisory committee that would have been able to hold its own public hearings and all of those different types of things and we had a very, very difficult battle here that day on the floor. It has become apparent, I think, to many of us that the PDA has done a good job on the administrative side working with the Air Force, working with the EPA and dealing with all the nuts and bolts of trying to take this military base and turn it into a private entity. Skip Jones has done a good job and I want to say that on the floor today that I don't have a problem with the job that Skip Jones has done. He has worked as hard as any state employee out there on trying to move this process forward. I think that we all underestimated how big a job that this was going to be. Clearly, it has been lacking the ability of the executive director to deal with the administrative part of it, and also go out and talk about the vision. I mentioned vision because your director of your Manchester Airport came in here one day, to a Senate committee, and spoke about the vision of what Manchester is going to be. They have gotten so bogged down into details that they haven't had the time to do that, they have not had the time to talk about what Pease is going to be or to even continue to work with the local communities. There is a real significant amount of concern by the local communities over our way along many of the lines of the concerns that have been expressed in Manchester about the airport. Manchester is dealing with all these issues and dealing with the noise issues and dealing with the traffic issues. The PDA is doing the same thing. There is going to be a new board coming in, maybe some of the same members will get reappointed, I know that. The Governor or the Senate President, whoever that is at the time or the Speaker, they will appoint the members. We felt that the one thing that needs to get done there is to have a person whose responsibilities will to be go out and build the consensus that needs to be built to make sure that Pease turns

into an island of economic opportunity for our citizens. We didn't want to do anything that impacts the present PDA, we didn't want to do anything that impacts the negotiations of Deutsche Air Bus, but we felt that clearly, that there needs to be the administrative side and there needs to be a public policy side. By putting this person in and saying that their responsibility is to be public policy, set the direction for the PDA, but that enhances the redevelopment effort. I would have opposed this a year ago, today I stand here, and I support it, because I think it will make the PDA more effective and more responsive to the public.

SENATOR COLANTUONO: Senator Shaheen, starting with paragraph #9 which is land use controls. It basically sets up a hierarchy whereby the authority will allow Newington and Portsmouth and their respective areas to go through the normal process of zoning and planning boards and so forth, but it says that the authority will have the overriding power to give final decisions on any vote, and it has to pass by 5 affirmative votes. I just want to make sure that I understand this correctly. So say for example, there was a building on the Portsmouth side and someone wanted to get a variance, they had to go to the Portsmouth zoning board. Say that variance passed unanimously in Portsmouth, now they have to go to the PDA. Say that day there were two members absent, so there were only five members voting that day. They would have to get a unanimous vote at the PDA. If even one person objected to it that would kill the whole project, am I reading that correctly?

SENATOR SHAHEEN: No. No, you're not. This was actually a process that was worked out over a period of about three months of negotiations with the PDA, their legal counsel and representatives from Portsmouth and Newington. It's really an attempt to balance and actually, what's right here has been adopted by the PDA as their operating procedures as far as land use goes. It's really an attempt to balance the interest of the local communities with the PDA's interest in developing the base. So what they said is because both Newington and Portsmouth are set up with planning boards and zoning boards and building inspectors who are already operating, already understand what is going on, any applications for development outside of the immediate airport district should go through the individual local planning or zoning board and then come back to the PDA. They gave the PDA the ultimate decisionmaking authority so that the PDA in some instances, and it would probably be very rare instances, an override of the decision of those local boards. The reason for the five person vote is statute that established the PDA two years ago, it required that any land use votes be passed by at least a five person majority.

SENATOR COLANTUONO: The committee established to conduct a nationwide search for Chief Executive Officer, I noticed that there is a member appointed at the Strafford county delegation, but no member of the Rockingham county delegation, is there any particular reason for that?

SENATOR SHAHEEN: Well, I think because Rockingham county is already very well represented: because Pease is located within Rockingham county, and Portsmouth and Newington are the immediately effected municipalities, they each have representatives. The PDA has a representative on the search committee. Now you have heard this from me before so it is not going to sound like anything new, what has been happening since the PDA was established, is that Strafford county, which is the county where actually a lot of the negative impact from Pease is going to happen, the growth, the housing starts, the amount of traffic, all of that impact is going to be greater in Strafford county than it is going to be in Rockingham county. So we thought that it was important to make sure that we had some representative from Strafford county who was part of that search committee.

SENATOR COLANTUONO: Can you tell me the reason why there is a person from the University of New Hampshire on this search committee? It's not any kind of a policy, why should they have an input?

SENATOR SHAHEEN: I think what we were trying to do is to tap into the expertise of the University with respect to conducting a search for somebody who would hopefully have some background in the high tech development background to be part of the final group that is recommended.

SENATOR COLANTUONO: With regard for the search for this Chief Executive Officer, was this part of another Senate Bill before us?

SENATOR SHAHEEN: No. As I said in my report, this is the first time that you are seeing this piece of legislation.

SENATOR COLANTUONO: Obviously this is going to cost a lot of money and add an extra layer for the salary . . .

SENATOR SHAHEEN: You mean once the person is hired it would add?

SENATOR COLANTUONO: Yes. Can you tell us why we need this extra person?

SENATOR SHAHEEN: Well, we have got this multi-million dollar development thats happening at Pease. This is the biggest development the state of New Hampshire has ever been involved in and we

started it with staff of about two people. I think it is unrealistic to think, first of all, that we don't need at least a second in command down there to get this project done. Secondly, that if we are going to do this kind of a development that is going to have this kind of a long-range impact on the state, we need to find the best person available to do that. We need to find somebody who has some expertise in this area, who has done this kind of a development in the past and to do that we need to conduct a nationwide search.

SENATOR COLANTUONO: On the committee established to study the feasibility of the research facility, is the authority in favor of using space there which I thought we were going to use for manufacturing jobs and so forth, to use for a research facility, are they in favor of that?

SENATOR SHAHEEN: They are. And in fact, you know Pease is a development of about almost 5,000 acres, and about 1,100 of it is going to be a wildlife refuge and so we are still talking about over 3,000 acres there. I don't know if I said that right, but over 3,000 acres of developable land. The exciting thing about this kind of a research facility is that it can be the magnet to attract all of that private industry that we want to bring in there. So this is something that we can go out and say to the business world and to companies that are looking at New Hampshire. It is really going to happen, the state's going to make this kind of an investment in this research center. We know that it is going to happen, and we are going to have top scientists from all over the world here. You can come and get your research done and you can bring your business here, you can have whatever you need to do, done at this center and then you can take that and use it in Nashua where Digital can use it, create new jobs, and you can use it up at James River in updating the paper mill, you can use it anyplace else in the state. But we can assure people that this is going to happen.

SENATOR COLANTUONO: Did they come in before the committee and say we do want this?

SENATOR SHAHEEN: They didn't come in, nobody came in. We did a number of phone calls, going out and meeting with people and talking with people.

SENATOR COLANTUONO: Now on the port. Last year in Capital Budget we passed through the \$16,500,000, but with the conditions that are in here, but I understand that we are taking those conditions out now, so my question is, do we now have the action plan which proves that they will generate the revenue sufficient to pay back or amortize the bonds?

SENATOR SHAHEEN: In fact, we don't have the action plan, what we do have is a report from the study committee which includes an economic analysis that says that this is going to be cost-effective.

SENATOR COLANTUONO: Do you think that we should keep those conditions in the legislation? The action plan had to be approved by the Capital Budget Oversight committee, the Fiscal committee and the Governor and Council and we are removing all of those safeguards now and just going ahead with the project?

SENATOR SHAHEEN: I certainly think that the port is now on notices. That they have to do those kinds of things. Perhaps Senator Cohen or Senator Dupont who are also part of the study committee would like to speak to that as well.

SENATOR COLANTUONO: Well my final question is on the wage and residency requirements. Whenever I see residency requirements, a red flag gets raised about the constitutionality of it. I don't believe that they are constitutional. Has that issue been addressed by the Economic Development committee and what is your opinion on it?

SENATOR SHAHEEN: To be honest, Senator Colantuono, I don't know if we actually asked for a legal opinion on that, because nobody thought that that was an issue, because we are not saying that all of them have to go to New Hampshire residents. If you read the language it says "at least 50 percent of the total employee hours", so it doesn't say the entire package. I have to say to address that a little bit, one of the things that we have talked about as part of this package, and one of the things that every economist that I have heard in this country, whether they be on the left or the right have talked about in terms of what we need to do to bring the country out of a recession, we have talked about investment in public works projects. That one of the things that we need to do is to put some money into the public sector that is going to put people back to work and this is what we were looking at here. We said, if we are going to put people back to work with this project, then we ought to try and do what we can to insure that whatever extent possible, that they are New Hampshire people that we are putting back to work.

SENATOR PRESSLY: I feel that I have to rise and speak to this. At the beginning of this debate on the economic development, I asked Senator Wayne King and really anyone who has really studied this to please let us know how the rest of the state . . . what do you have in place to insure that what you are creating and the amount of money that you are spending, will in fact be distributed? It is a wonderful theory to say that this is going to inspire, this is going to be the focal



point, but those things don't automatically work that way. I feel that it has to be noted that on the Economic Development committee itself, there was no one from the city of Manchester; there was no one from Nashua. So the two major metropolitan areas of the state were completely excluded from the committee that created this. I think that there is a real danger in the exclusionary references, the fact that there is, again, it may be here and I haven't seen it. I have requested that it be pointed out. It seems to be an extremely focal regional effort which most of us would not object to if we could see some evidence that you recognize the real tendency, the human nature tendency to get a real exclusive little group that takes care of only itself and I see this here. Again, I welcome anybody on this committee, the two metropolitan areas have been totally excluded, that is where your major labor force is, that is where your entrepreneurial force is, that is where your business profits tax is generated from. I would like to see a little more evidence that this is not just a very exclusive seacoast bill. Thank you.

SENATOR W. KING: Let me say first of all that I come from the forgotten region of the state, forgotten in good times and the bad times. I believe that this technology center is not only the best thing that we have done in this session and any session that I have been in in this legislature, but I also believe that the spinoffs will help my area considerably. Let me just make a couple of points about that. Senator Shaheen has very adequately explained to you what the goals are with this. There is the Earth, Oceans and Space Research Center; there is the Environmental Research Group and there is the Computer interpretability Group. Today the Computer Interpretability Group is working with Digital Equipment Corporation. Many of the breakthroughs that they make on a yearly basis go into cutting edge technologies at the Digital Equipment Corporation Facility, providing jobs in that area. Many of the things that they will be doing with Sanders Corporation will go into jobs in the Nashua area. This is cutting edge technology that will position New Hampshire to compete in the 21st century. In the area of environmental research group, in the next 10 years alone \$1,400 billion will be spent in Europe to cleanup the environment there. If New Hampshire is positioned to compete in that international marketplace in terms of environmental litigation and environmental protection, we will profit tremendously by that, both in terms of creating new technologies and creating jobs. We have looked for three years outside of the state of New Hampshire for a savior and we have been unsuccessful to this point. We hope that this will further entice Deutsche Air Bus, but let me remind you that when we seek a savior outside of the state of New Hampshire, that savior not only can come to New

Hampshire, that savior can leave New Hampshire. What this proposal does is create an institution structure at Pease that will act as a magnet for growth that will provide spinoffs all over the state of New Hampshire to James River Corporation to Sanders Corporation to Marken Corporation in Keene and in the Portsmouth area, in the Central part of the state to all of these companies that provide high profit, high wage, high tech jobs, that is the kind of thing that will benefit all of us. That institution that we create won't go away, it will stay here and continue to adapt to the dynamics of a very rapidly changing marketplace and help us to remain competitive in the years to come. I understand that there is concern from people in Nashua. Senator Nelson has talked to me on many occasions about her concern about the high unemployment rate in Nashua, Senator Pressly has also. I know that there are concerns all over the state of New Hampshire. We are one state, we are not Nashuans, we are not Berliners, where is Otto? We are New Hampshireites. This is an investment in our university system and in our total economy that will provide many, many benefits and many, many jobs all over the state of New Hampshire for years to come.

SENATOR NELSON: Senator Dupont, on page 23 of the calendar it mentions in 29 that appropriations for the New Hampshire Port Authority and my question is specifically this, does the \$16.5 reflect the \$1,500,000 for the engineering studies design and approval process?

SENATOR DUPONT: Senator, we have already approved the \$16.5. One of the reasons we did this is because when the study committee met, one of the things that became apparent to us was the fact that that cost us maybe more or less than was needed. So what we have done is given them the money to go out and do the engineering and study work on an expedited date so that this project can be built while we are still all around to enjoy the benefits of it. It may be that it will take more than \$16.5, maybe it will take less than \$16.5, but until it gets engineered and the environmental issues are dealt with, we do not know if in fact that \$16.5 or \$15,000,000 or \$18,000,000 is in fact going to be required to build this.

SENATOR NELSON: Senator Dupont, let me see if I can grasp this. There is an appropriation of \$1.5?

SENATOR DUPONT: That is correct, Senator.

SENATOR NELSON: That is an authorization, I mean an appropriation. You are telling me that you have authorized 16.5, but you are only appropriating \$1.5?

SENATOR DUPONT: That is correct, Senator.

SENATOR NELSON: If I take 16, do I add them to this? Does the 16.5 come, drawn down on that?

SENATOR DUPONT: You would add it to this at the present time, Senator. But let me just explain what happened so that you understand. What the study committee came forward with was a recommendation that the Port be allowed to use its excess revenues to do the engineering and permit. What we discovered is that if we did that using the excess revenues that generated, it was going to take five to six years to do the engineering and permit. We figured that by the time they get through doing the engineering and permit, that all of the environmental regulations will have changed and the permits that they may have received and the engineering that they have done, will no longer be applicable. So we said that we have to get the engineering and the permitting done so that we know what the final cost is going to be and so that we can get this project underway and hopefully, get a working pier as well as some jobs in the process.

SENATOR NELSON: I have tried to think of how to phrase this question as tactfully as I possibly can, which is a new task for me. Senator Dupont, as the chair of Capital Budget and dealing with projects that have come before the Capital Budget, Senator Bass spoke of the technical college requesting \$5,000,000 in bonding, someone else requesting \$10,000,000. No one has asked the question yet, perhaps they have and I didn't hear them. We are talking about an incredible amount of bonding. I would hope at some point in the discussion that someone is going to talk about the impact of the bonding in that we are bonding in Capital Budget. We have had Georgie Thomas, in who tells us about the impact, I think that you get the idea and if it's coming later on I would be happy to defer it till later.

SENATOR DUPONT: Senator, let me just add something to what we have done. There is no question that some of the things that we are going to do are going to impact the capability of the state to continue to bond money. The Manchester Airport had an effect on it and I don't want to keep singling that out. The Court, James River, Deutsche Air Bus, all of those things are going to impact the ability of the state of New Hampshire to borrow money. Last year this legislature said we are going to appropriate \$16,500,000, but we are not sure that we should spend it, we want you to go out and do your homework. I participated in that study committee and I went in as a skeptic, I came out a believer that the Port of New Hampshire is a very important part of our economic development strategy for the state of New Hampshire. Let me explain to you why. It is not just

scrap metal. It is other entities that we want to bring products through that facility. It is part of the whole issue of creating economic activity in our state that links to foreign markets. I think as we move forward and start to look at the opportunities that are going to be available in New Hampshire businesses, the Port becomes more important, Manchester becomes more important, Pease becomes more important and to all the manufacturers all over the state of New Hampshire that infrastructure that is comprised by those three facilities are what is going to make New Hampshire's businesses able to compete globally.

SENATOR NELSON: What about the bonding though, what is the impact of all this bonding on the bond rating in the state? I think that there has to be an impact?

SENATOR DUPONT: Senator, there is an impact. But again, it's no different than bonding a road which we do, as you know. It is no different than bonding rail improvements, it's all part of transportation infrastructure that you need if you are going to be able to compete in the world today.

SENATOR NELSON: Is it going to effect us in the bond rating?

SENATOR DUPONT: Senator, it will. We have the capacity to bond this money if that is what your question is.

SENATOR PRESSLY: I would like to clarify something and maybe state it a little bit differently. The area that concerns me, I support the concept and the ideas of this whole effort, the part that concerns me is that I feel that it is institutional oriented. Most of this is creating institutions and I don't see the language that makes it user friendly. I do not see any effort or any language to get this product to access it to the citizen. It is going to be other people besides this institutions that will create the jobs that will create the products to be manufactured, the innovations that are going to help our economy. I do not see and hopefully, it is there and it just has not been explained. But I do hope that in the future there will be some effort to see that the average citizen who is going to create the jobs, has access to this, and that we stop talking so much about institutions and getting this information and this data to the people who are going to be creating the jobs.

Senator Hollingworth moved the question.

Adopted.

Committee amendment adopted.

Ordered to third reading.

**SB 402**, an act allowing mutual insurers to convert into stock insurance companies, regulating business transacted with producer controlled property/casualty insurance, and making other changes in the insurance laws. Economic Development committee. Inexpedient to Legislate. Senator Bass for the committee.

SENATOR BASS: Mr. President, as we all know since we have already debated this subject, the substance of SB 402 is made a part of SB 339. The committee urges your adoption of the report of inexpedient to legislate.

Committee Report of Inexpedient to Legislate is Adopted.

**SB 415-FN-A**, an act establishing an economic development matching grants program. Economic Development committee. Inexpedient to Legislate. Senator W. King for the committee.

SENATOR W. KING: The contents of this bill are contained in the Senate economic development package.

Committee Report of Inexpedient to Legislate is Adopted.

**SB 423-FN**, an act establishing a study committee on financial management of public funds. Economic Development committee. Inexpedient to Legislate. Senator Bass for the committee.

SENATOR BASS: Mr. President, the contents and subject of SB 423 has been made a part of SB 450. Accordingly, the committee request the Senates approval of its recommendation of inexpedient to legislate.

Committee Report of Inexpedient to Legislate is Adopted.

**SB 432-FN**, an act relative to motorcycle noise level limits. Economic Development committee. Ought to Pass. Senator Bass for the committee.

SENATOR BASS: Mr. President, of all the bills that the Economic Development committee has considered in this question, none created more noise in the committee than this one. There was a considerable amount of debate expressed on the part of an argument. I know that unfortunately, Senator Dupont has just reappeared in the chamber, because I am expecting a vicious debate on this matter. The committee, after a lot of reflection, voted 5 to 1 in favor of ought to pass and the committee urges the Senate's adoption of the committee report.

SENATOR HEATH: Can you tell me what this has to do with economic development?

SENATOR BASS: Senator Heath, the Economic Development committee has obviously shown flexibility in its willingness to deal with a multitude of different issues. Its ability to package them in such a

fashion so that they are compatible to the interest of the Senate. Thanks to the superior parliamentary behavior of Senator Hough from district #5, the Economic Development committee was given the opportunity to consider yet another important bill dealing with economic development. As a result the committee took on this responsibility that Senator Hough had delegated to it and this has been the result of this committees lengthy deliberations on this matter.

SENATOR HEATH: Senator Bass, has this Senate become a Senate of sort of one committee now?

SENATOR BASS: Not that I am aware of. If you would check the Black Book you will find that there is 17 or 18 different committees in the Senate.

SENATOR HEATH: Rolling these bills all together as you have in many cases, I understand that you have a busy agenda and you are doing most of our business for us, are these bills becoming sort of consent calendars?

SENATOR BASS: No, Senator Heath. I guarantee you that the motorcycle noise level bill is not made a part of the package because it was considered to be of such great significance that it should be considered alone and stand on its own merits.

SENATOR HEATH: Are you a ventriloquist or is that Senator Hough talking here?

SENATOR BASS: I only speak for myself, Senator Heath?

SENATOR HEATH: When you talk about rolling them in, is that essentially a euphemism or a consent calendar kind of action or is there another purpose in putting all of these bills together that are on different subjects?

SENATOR BASS: I would repeat for you, Senator Heath, that the motorcycle noise level bill is a bill that has been reported out of the committee as ought to pass and it is going to roll on its own, not to be rolled into anything else and hopefully, be quieter than some of the other issues that we have debated today.

SENATOR HEATH: Does this motorcycle bill concern both smoke and mirrors?

SENATOR BASS: I would point out to you as being one who has studied this bill in great detail, that this bill does not deal with either smoke and mirrors, it deals with hot air and noise.

SENATOR MCLANE: Senator Bass, can you hear me? I was wondering if you knew how loud 106 decibels is?

SENATOR BASS: Senator McLane, as the only instrument rated pilot in this room today, I can tell you that I know that well, because aircraft operate, especially small ones, in the vicinity of 100-120 decibels. It is necessary for pilots to wear headsets at all times, otherwise they would go deaf after about four or five years. I would also remind the good Senator from district #15 that over Senator Dupont's objections, we have kept the bill in its original form, which requires that the test be conducted within 20" of the back of this exhaust pipe, so that the testor receives the maximum benefit of both the hot air and gas that comes out of it, and the noise.

SENATOR MCLANE: Frankly, I am absolutely appalled that an Economic Development committee could pass on a bill that would allow vehicles to be on highways in this state that is 106 decibels. The highest allowable for a jet ski or a motorboat is 84 decibels and that is on a body of water where you assume that there aren't people close to the vehicle. I cannot imagine an elderly person walking down the street of a community in this state and having that noise go by at 106 without knocking them off the sidewalk. I think that it is a terrible thing that the Economic Development committee cares more about motorcycles than little old ladies.

SENATOR BASS: Senator McLane, I would like to respond to that very interesting interrogatory, by reminding the Senator that the test is being tested roughly 20" from the back of the stack. In order to have the benefit of the 106 decibel level, the motorcycle would probably have had to have run over the elderly person beforehand, in which case it is not really a great concern.

SENATOR HOLLINGWORTH: Senator McLane, I too was a little bit surprised when I saw the 106, but then I was told that that was okay because where it is being tested. That in reality, it will be much less; that in fact it will be much quieter since right now we have no level. So I am praying to dear god that they are not giving me incorrect facts, because this bill came in to ease the problem that we have and not to exacerbate it. So I am praying and trusting that this is going to do it. Doug Patch went over and said that he felt that it was going to be okay because when they tested it within 20" it is going to give them the level of being much quieter at a distance. I have to say that the reason that it got into Economic Development, I just want to refresh everyones mind, was after the very lengthy day that we had on the debate on the 5.5's and I think my engines were being revved that day. I think that is how it ended up in Economic Development.

Adopted.

Ordered to third reading.

**SB 448-LOCAL**, an act enabling municipalities to grant property tax credits to commercial enterprises making capital investments, increasing net employment, or undertaking research and development. Economic Development committee. Inexpedient to Legislate. Senator Bass for the committee.

**SENATOR BASS:** Mr. President, along with SB 369, SB 448 is incorporated in a substantially different fashion into SB 450. The committee urges the Senates adoption of its report of inexpedient to legislate.

Committee report Inexpedient to Legislate is Adopted.

**SB 450-FN**, an act relative to the industrial development authority. Economic Development committee. Ought to Pass with Amendment. Senator Dupont for the committee.

**5281L**

### **Amendment to SB 450-FN**

Amend the title of the bill by replacing it with the following:

#### **AN ACT**

relative to capital formation.

Amend the bill by replacing all after the enacting clause with the following:

#### **1 Statement of Purpose Regarding Capital Formation.**

I. The general court finds that public policies are urgently required to restore the strength and sustain the growth of the economy in order to increase the prosperity and enhance the opportunities of the people of New Hampshire. The general court finds that such public policies must be pursued in a coherent, consistent and comprehensive manner both to meet the immediate challenges and to serve the future interests of the state and its people. The general court also finds that measures to further capital formation, regulatory reform, business assistance, infrastructure development and strategic planning are legitimate, necessary and timely priorities for legislative initiatives. Therefore, the general court has addressed these aspects of public policy in 4 acts which together represent a program to revive and sustain economic growth in New Hampshire.

II. The general court finds that a dearth of capital severely hinders investment required for the recovery and expansion of the economy. The general court also finds that the authority and credit of state and municipal government can be properly and prudently invoked to expand the supply of investment capital. Therefore, the



general court expands the authority and resources of the industrial development authority to augment the capital for investment in commercial and industrial enterprise. The general courts also expands the authority of municipal development agencies to engage in a wider range of activities as well as to strengthen the partnership between state and local government in pursuit of economic development. The general court also finds the want of venture capital for fledgling enterprises especially marked. The general court recognizes that tax incentives represent appropriate, legitimate, and effective means of marshaling and directing private capital to the establishment and development of new enterprise. Therefore, the general court grants incentives to private entities to contribute to a venture capital fund to invest and reinvested in enterprises operating in New Hampshire.

2 Purpose. The general court finds that the powers of the industrial development authority, to be known henceforth as the business finance authority, should be expanded and modified so that it can effectively serve the capital needs of business in coordination with federal programs and in a manner consistent with the goals and objectives of state government and its political subdivisions. It is hereby declared that the governor and council, the state treasurer, and business finance authority shall be performing a governmental function, advancing a public purpose, and conferring a public benefit in carrying out the provisions of sections 3 - 14 of this act.

3 Business Finance Authority. RSA 162-A is repealed and reenacted to read as follows:

## **CHAPTER 162-A**

### **BUSINESS FINANCE AUTHORITY**

162-A:1 Declaration of Need and Purpose. It is declared that there is a statewide need for the preservation and development of business and industry for the betterment of the economy of the state and its inhabitants. It is the purpose of this chapter to provide for the preservation, establishment, and redevelopment of business and industry, together with adequate transportation, water, sewage and other necessary facilities, so as to provide and encourage orderly development, create or preserve employment opportunities, protect the physical environment, preserve or increase the social or economic prosperity of the state or its political subdivisions, and promote the general welfare of the state's citizens. It is further declared that the business finance authority, created in this chapter shall be regarded as performing an essential governmental function in carrying out the provisions of this chapter.

162-A:2 Definitions. In this chapter:

I. "Authority" means the business finance authority, formerly known as the industrial development authority and the industrial park authority.

II. "Board" means the board of directors of the authority.

III. "Bond" means any bond, note or other evidence of indebtedness issued by the authority under this chapter.

IV. "Borrower" means any business that receives a loan or a loan guarantee pursuant to this chapter.

V. "Business" means the carrying on of any business activity, whether as a corporation, partnership, limited partnership, sole proprietorship or otherwise, including all activities that are industrial, commercial, or recreational.

VI. "CAP fund" means a special loan loss reserve fund established at a participating state bank pursuant to RSA 162-A:12.

VII. "CAP loan" means a loan that is made to a business by a participating state bank and is entitled to be secured by that participating state bank's CAP fund.

VIII. "CAP participation agreement" means an agreement between the authority and a participating state bank setting out the terms and conditions under which the authority will make contributions to that bank's CAP fund and specifying the criteria for a loan to qualify as a CAP loan.

IX. "Financial institution" means any bank, trust company, or other organization that is in the business of making loans to businesses, provided that such bank, trust company or other organization is duly organized under the laws of the United States or any state, and provided further that with respect to any organization that is not a bank or trust company, it is qualified to do business in New Hampshire.

X. "Loan" for purposes of this chapter shall include a sale and leaseback, a financing lease, a conditioned sale, or any other arrangement that is in the nature of a loan.

XI. "Local development organization" means any local or regional development agency, authority, corporation, association, foundation or other entity, regardless of the name or manner of organization, provided it shall have as a principal function the promotion, encouragement, or development of business.

XII. "Participating state bank" means any state bank participating in the capital access program established by RSA 162-A:12.

XIII. "Project" means all property, rights, easements, licenses, rights of way, and franchises deemed necessary or convenient for the carrying out of a business or industrial activity, and shall embrace all means of accomplishing the purposes of this chapter.

XIV. "Project costs" means any costs or expenses reasonably incidental to a project and may, without limitation, include the costs of:

- (a) Issuing bonds or notes to finance a project.
- (b) Acquiring land, buildings, structures and facilities, whether by lease, purchase, construction, or otherwise.
- (c) Acquiring rights in or over land, air, or water.
- (d) Improving land and improving buildings, structures and facilities by remodeling, reconstruction, replacement, or enlargement.
- (e) Acquiring and installing machinery and equipment.
- (f) Obtaining professional or advisory services.
- (g) Interest prior to and during construction and until one year after the completion of a project.
- (h) Creating reserves.

XV. "State bank" means any bank or trust company organized under the laws of the United States or any state with offices located in New Hampshire.

162-A:3 Authority Created. There is hereby created the business finance authority which shall be a body corporate and politic as an agency of the state having the powers and jurisdiction hereinafter enumerated and such other and additional powers as shall be conferred upon it by the legislature.

162-A:4 Management.

I. The management of the authority shall be vested in a board of 10 directors, who shall serve without compensation. The state treasurer shall serve as a nonvoting ex officio member of the board. The governor, with the consent of the council, shall appoint the other 9 members, who shall include an executive director of a regional planning commission and one elected or appointed local official. The governor shall designate one of the board members as chairman. Each appointed member shall hold office for 3 years, or until his successor has been appointed.

II. A director, officer, or employee of the authority shall not use his office for personal gain or act in a manner contrary to the public interest. A director shall abstain from voting on matters in which he has a financial interest, whether personally or through a spouse or dependent. If in doubt, the director may submit a written request for advice to the chairman, who shall make a ruling as to whether the director may vote on a matter.

162-A:5 Vacancy, Removal, or Suspension.

I. If a vacancy shall occur by death, resignation, or otherwise of those appointed as directors of the authority, the governor, with the advice and consent of the council, shall fill the same for the unexpired term. The governor and council may at any time remove a

director for inefficiency, neglect of duty, or malfeasance in office, but no director shall be removed without a hearing, after notice in writing of the charges against him.

II. If a director is appointed to the board as an executive director of a regional planning commission or as an elected or appointed local official and the director ceases to hold such office, he shall continue as a director for the remainder of his unexpired term and shall be treated for purposes of RSA 162-A:4 as if he continued to hold such office.

162-A:6 Incorporation; Powers. The authority shall be a corporation in the state of New Hampshire and shall have powers to:

I. Sue and be sued.

II. Have a seal and alter the same at pleasure.

III. Adopt and amend bylaws.

IV. Adopt rules, under RSA 541-A, relative to:

(a) A description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests.

(b) Procedures of the authority in carrying out its programs under this chapter or of the authority in issuing bonds pursuant to RSA 162-I.

(c) Procedures for the establishment of fees and charges.

V. Develop, construct, and reconstruct business facilities.

VI. Acquire, hold, lease, and dispose of real and personal property for its purposes.

VII. Acquire in the name of the authority by gift, purchase, lease or otherwise, real property and rights or easements therein, deemed by it necessary or desirable for its purposes.

VIII. Acquire, in the name of the authority, security by way of mortgage deed or otherwise any property, title to which any be in any corporation, partnership, limited partnership, individual or group of individuals, or other entity other than the authority and upon which projects may be developed or constructed as provided in this chapter. Such security may be acquired by the authority solely in its own name, with community development organizations, with other governmental entities, or with a non-governmental entity, whether operated for profit or as a charity. If the security is acquired with any other entity, then the authority shall act in conformance to RSA 387.

IX. Sell or lease any property it may own.

X. Make contracts with the United States or any agency thereof, the state of New Hampshire or any agency thereof, towns or cities, public corporations or bodies, private corporations, individuals or other entities.

XI. Accept grants that will assist in the carrying out of its purposes under this chapter and to do any and all things necessary or convenient in order to avail itself of such aid.

XII. Employ or retain as independent contractors such assistants, agents, consultants, accountants, or attorneys as it shall deem necessary or desirable for its purposes, notwithstanding any other provision of law.

XIII. Borrow money, make and issue negotiable notes, bonds and other evidences of indebtedness or obligations of the authority and to secure the payment of such obligations or any part thereof by pledge of all or any part of, the revenue of the authority.

XIV. Develop or assist in the development of real property owned by any local development corporation or foundation which has as its primary purpose the encouragement and development of business or industry.

XV. Develop performance indicators to measure the effectiveness of authority programs.

XVI. Make or acquire loans or advances, with or without interest, and whether or not secured by a mortgage, to businesses operating within the state.

XVII. Invest or deposit for its own account moneys it may receive or hold under this chapter or RSA 162-I.

XVIII. Establish or contribute to loan reserve funds held by or for the protection of private financial institutions.

XIX. Maintain offices at such place within the state as it may designate.

XX. Renegotiate, refinance or foreclose, or contract for the foreclosure of, any mortgage or loan in default; waive any default or consent to the modification of the terms of any mortgage or loan; commence any action to protect or enforce any right conferred upon it by any law, mortgage, loan, contract or other agreement, and bid for and purchase such property at any foreclosure or at any other sale, or acquire or take possession of any such property; operate, manage, lease, dispose of, and otherwise deal with such property, in such manner as may be necessary to protect the interest of the state, the authority and the holders of the authority's bonds, notes and other obligations; all subject to any agreements with the state or with bondholders or noteholders.

XXI. Institute any action or proceeding against the maker, payor or other party, hereafter referred to as the obligor, who is liable for the payment of any obligation, mortgage or loan held or made by the authority under the provisions of this chapter in any court of competent jurisdiction in order to enforce the provisions of this chapter, or to foreclose mortgages or loans, or to protect the public interest.

XXII. Procure insurance against any loss in connection with its property and other assets, in such amounts and from such insurer as it deems advisable.

XXIII. Take such other action as may be necessary or convenient to carry out its purposes and exercise its powers under this chapter.

162-A:7 Aid to Local or Regional Development Organizations.

I. The authority may expend money upon such terms and conditions as prescribed by the authority to acquire, develop, redevelop, construct, renovate, or expand real property for business use. Any such real property shall be owned either by the authority or by a local development organization. No expenditure shall be made by the authority under this section unless it is with the approval of, or in cooperation with, a local development organization.

II. Prior to the expenditure of any money under this section for property to be owned by a local development organization, the authority shall enter into one or more agreements with such organization to provide for the conditions on which the expenditures will be made, the terms of repayment of such expenditure, the time and manner of such repayment, conditions under which the property is to be used by or leased to one or more businesses, the form and amount of security if any, to be pledged to the authority for such repayment, and such other provisions as the authority may determine are necessary or desirable. Repayment of any expenditure made by the authority may be with or without interest and may take the form of cash, property or services.

III. Any property acquired, developed, redeveloped, constructed, renovated, or expended under this section may be leased by the authority or the local development organization, as appropriate for business use, and under such terms and conditions as they shall deem appropriate. Any such lease may include options of the lessee to purchase the property, provided that the purchase price upon the exercise of any such operation shall not be less than the amount necessary to reimburse the authority, with interest if applicable, for any unpaid balance of expenditures made by the authority for such property. Any lease shall obligate the lessee to pay all costs and expenses of upkeep, maintenance and operation of the property during the lease term.

IV. The authority shall not expend any money or make a binding commitment to spend any money for a particular project under this section unless after a hearing the governor and council have made the findings specified in RSA 162-A:17.

162-A:8 Guarantee of Loans to Small Businesses.

I. Upon recommendation of the authority for the proper implementation of the declared purposes of this chapter, the governor and

council may award a state guarantee of the principal of and interest on any loan made by a private financial institution to any business that is or will be operating in the state, provided that the loan is also guaranteed in part under a program administered by the United States Small Business Administration. Such state guarantee shall be up to 90 percent of the portion of the loan guaranteed through the United States Small Business Administration. The full faith and credit of the state shall be pledged for any such guarantee, but the total amount of principal guaranteed by the state under this section and RSA 162-A:10, III shall not exceed \$20,000,000.

II. The state's guarantee of a loan under this section shall be evidenced by a guarantee agreement entered into by the state, the lending financial institution, and the borrower. Such guarantee agreement shall contain such terms and conditions as the authority and the governor and council may impose, including, without limitation, restrictions on the use of loan proceeds, restrictions on the use and operation of any project financed or assisted by the loan, appropriate controls on the requisition of loan proceeds by the borrower, provisions for the state to demand acceleration of the payment of the loan in the event of a default by the borrowing business, provisions for payment to the authority of guarantee fees and reimbursement of costs and expenses, provisions for reimbursement of the state if the state is required to honor the guarantee, appropriate financial covenants, and provisions for the establishment of reserves. In addition, as a condition of awarding any guarantee, a borrower shall be required to grant to the state a mortgage, security interest, or other pledge of property to the same extent any such grant is made to the lending financial institution with respect to the loan. Such grant to the state shall be on not less than a parity basis with the lending financial institution. Any guarantee agreement authorized in accordance with this section shall be executed on behalf of the state by the chairman, vice chairman, or executive director of the authority. The governor, with the advice and consent of the council, is authorized to draw his warrant for such sum as may be necessary out of money in the state treasury not otherwise appropriated, for the purpose of honoring any guarantee awarded under this section.

III. Any loan guaranteed under this section shall meet the following minimum requirements:

(a) The weighted average maturity of the loan shall not exceed the reasonably expected average useful life of the property financed by that loan, and for this purpose working capital shall be treated as having a useful life of not more than 7 years.

(b) The total principal amount of any loan or loans guaranteed under this section made to one borrower shall not exceed \$1,500,000.

(c) The total principal amount of any loan or loans guaranteed under this section made to one borrower to finance working capital shall not exceed \$500,000.

IV. The amount of any guarantee awarded under this section shall be reduced in proportion to any reduction in the principal balance of the loan.

V. The governor and council shall not award any state guarantee under this section unless after a hearing they have made the findings specified in RSA 162-A:17.

#### 162-A:9 Temporary Loans to Business.

I. The authority may loan money to businesses for any project. Any such loan shall be on such terms and conditions as prescribed by the authority and shall be evidenced by a note given by the business to the authority. In addition, prior to making any loan, the authority and the business shall enter into a loan agreement specifying the terms and conditions of the loan. Any loan agreement shall specify the terms of repayment of the loan, provide for the payment of an appropriate interest rate, and obligate the business to pay all the costs and expenses of upkeep, maintenance, and operation of the project being financed. A loan agreement may also provide such terms and conditions as the authority shall deem necessary or desirable, including, without limitation, provisions requiring that collateral be pledged to secure the loan, restrictions on the use of loan proceeds, restrictions on the use and operation of any project financed or assisted by the loan, controls on the requisition of loan proceeds, appropriate events of default, provisions for payment to the authority or origination fees, late charges and additional interest on overdue payments of principal, interest or other charges, appropriate financial covenants, and provisions for the establishment of reserves.

II. Any loan made under this section shall meet the following minimum requirements:

(a) The total principal amount of any loan or loans made to one borrower under this section shall not exceed \$2,000,000.

(b) The total principal amount of any loan or loans made to one borrower to finance working capital shall not exceed \$500,000.

(c) The final maturity date of any loan or loans, including renewals, shall not be later than the later of 3 years from the date the loan is made or one year after the project was placed in service.

III. The authority shall not make any loan or enter into any loan agreement under this section unless after a hearing the governor and council have made the findings specified in RSA 162-A:17.

#### 162-A:10 Secondary Market for Loans Made by Local Development Organizations.

I. The authority may acquire for its own account, or for resale,



loans made by local development organizations to businesses operating within the state. The authority shall acquire such loans only if the local development organization agrees to use the proceeds of the sale of such loans for the promotion, encouragement, or development of business within the state, or a region or community of the state.

II. Prior to the acquisition of any loans from a local development organization, the authority shall enter into a loan purchase agreement with the such organization. Such loan purchase agreement shall specify the terms and conditions under which the authority will purchase loans, the purchase price for such loans, and the terms and conditions for use of the purchase price by the local development organization. The loan purchase agreement may also contain such provisions as the authority may deem necessary or desirable, including, without limitation, representations, warranties, and covenants of the local development authority regarding the loans, conditions under which the local development authority may be required to repurchase the loans, provisions for the payment of guarantee fees to the authority in the event the loans are guaranteed under RSA 162-A:10, III, provisions for payment of the authority's costs and expenses, and provisions for the local development authority to continue servicing the loans on behalf of the authority or any subsequent purchaser.

III. In order to facilitate the resale of loans acquired under this section, at the request of the authority, the governor and council may award a state guarantee of up to 90 percent of the principal of and interest on such loans. The full faith and credit of the state shall be pledged for such guarantee, subject to the limit specified in RSA 162-A:8, I. The state's guarantee of loans under this section shall be evidenced by a guarantee agreement between the state and the purchaser of the loans. such guarantee agreement shall be assignable to any subsequent purchaser or purchasers of the loans and shall contain such provisions as the authority and the governor and council may deem appropriate. Any guarantee agreement authorized in accordance with this section shall be executed on behalf of the state by the chairman, vice chairman, or executive director of the authority. The governor, with the advice and consent of the council, is authorized to draw his warrant for such sum as may be necessary out of money in the state treasury not otherwise appropriated, for the purpose of honoring any guarantee awarded under this section. The amount of any guarantee awarded under this section shall be reduced in proportion to any reduction in the principal balance of the loan.

IV. The authority shall not purchase any loans under RSA 162-A:10, I or enter into a loan purchase agreement under RSA 162-A:10, II unless after a hearing the governor and council have made the findings specified in RSA 162-A:17.

V. The governor and council shall not award any state guarantee under RSA 162-A:10, III unless after a hearing they have made findings specified in RSA 162-A:17.

162-A:11 Small Business Guarantee Fund Established. In order to provide additional security to the state for any loan guarantees made under RSA 162-A:8 or RSA 162-A:10, there is hereby established a small business loan guarantee fund, which shall be held by the authority apart from all of its other funds, and which shall be deemed irrevocably pledged to secure all loans guaranteed under RSA 162-A:8 or RSA 162-A:10, III. Whenever a loan guarantee is awarded under RSA 162-A:8 or RSA 162-A:10, III, the authority, the borrower, the lending financial institution, the local development organization, the purchaser of the loans, or any appropriate combination of them shall deposit in such fund an amount equal to not less than 10 percent guaranteed portion of the principal of the loan or loans. If a state guarantee is called upon to be honored, the authority, upon direction of its treasurer or either assistant treasurer, shall draw upon such fund for the purpose of honoring such guarantee, and only when amounts in the fund are exhausted shall the governor be called upon to draw his warrant pursuant to RSA 162-A:8, II or RSA 162-A:10, III. Interest earned on amounts invested in the fund shall be accumulated therein or paid to the authority upon its direction. If at any time the amount in the fund exceeds 10 percent of the guaranteed portion of the principal of all loans guaranteed under this section, or such higher amount as may be determined by the authority, the authority may withdraw the excess. The authority may enter into such trust agreements, depository agreements, or other arrangements with one or more state banks in order to carry out the purposes of this section.

V. The governor and council shall not award any state guarantee under this section unless after a hearing they have made the findings specified in RSA 162-A:17.

162-A:12 Capital Access Program.

I. The authority may contribute money to special loan loss reserve funds, to be known as "CAP funds," that shall be held at participating state banks. Each such fund shall be held by the participating state bank separate and apart from all other funds of the bank and shall be held exclusively to secure principal of and interest on CAP loans made by that participating state bank.

II. The amount of the authority's contribution to a CAP fund shall not exceed 10 percent of the principal amount of the CAP loans to be secured by the CAP fund. As a condition of making a contribution to a CAP fund, the authority may require the borrowers or the participating state bank to make a contribution to the CAP fund and may impose such other conditions or requirements as the authority may deem necessary or desirable. Moneys contributed to a CAP fund by the authority shall be segregated from other moneys in the fund. Investment earnings on the CAP fund shall be credited to the fund, and such earnings attributable to authority contributions shall be periodically paid to the authority unless the CAP participation agreement otherwise provides.

III. Prior to establishing a CAP fund at a participating state bank, the authority shall enter into a CAP participation agreement with the participating state bank. The CAP participation agreement shall provide:

- (a) The amount of the authority's contribution to the CAP fund.
- (b) The conditions under which the authority will make additional contributions to the CAP fund, up to a specified ceiling.
- (c) The conditions under which the participating state bank may withdraw money from a CAP fund to pay a defaulted CAP loan.
- (d) Minimum due diligence procedures for servicing CAP loans.
- (e) Conditions under which the participating state bank or a borrower will be required to contribute to the CAP fund.
- (f) Provision for the payment of authority fees, costs, and expenses.
- (g) Provisions for the return of contributions to the CAP fund made by the authority, the participating state bank, and the borrowers.
- (h) A schedule for the anticipated origination of CAP loans.
- (i) Criteria and procedures for qualifying a loan as a CAP loan.
- (j) Requirements that the participating state bank report to the authority not less often than annually regarding CAP loans made, outstanding balances on CAP loans, delinquent CAP loans, CAP fund balances, CAP fund investments, contributions and withdrawals, and such other information as the authority may deem appropriate.
- (k) Permitted investments in the CAP fund.
- (l) Other terms and conditions as the authority may deem necessary or desirable.

IV.(a) At a minimum, CAP loans shall meet the following requirements:

(1) The borrower is either a start-up business or did not have annual sales in its most recently completed fiscal year of greater than \$3,000,000.

(2) The total outstanding principal amount of CAP loans to the borrower does not exceed \$500,000.

(3) The proceeds of the CAP loan shall be used for industrial, manufacturing, or recreational business purposes.

(b) The authority may from time to time impose requirements on CAP loans in addition to those contained in subparagraph (a) or in a CAP participation agreement by written notice to participating state banks, but such additional requirements shall not apply to CAP loans already made, or to CAP loans for which written commitments exist, provided such CAP loans are made within 3 months of the date of the written notice. Such notices shall not constitute rules within the meaning of RSA 541-A.

V. The authority shall not initially fund any CAP fund or enter into a CAP participation agreement or any material amendment to a CAP participation agreement, unless after a hearing the governor and council have made the findings specified in RSA 162-A:17.

162-A:13 Agreements Commercially Reasonable. Any agreements entered into by the state or the authority under this chapter shall be deemed to be on commercially reasonable terms.

162-A:14 Issuance of Bonds.

I. The authority may issue bonds pursuant to this section which shall be obligations of the authority and not general obligations of the state, except as provided in RSA 162-A:16. Such bonds may be issued from time to time consistent with the purposes and provisions of this chapter to make expenditures in aid of local development organizations under RSA 162-A:7, to make temporary loans to businesses under RSA 162-A:9, to acquire loans under RSA 162-A:10, to fund the small business guarantee fund under RSA 162-A:11, to make contributions to CAP funds under RSA 162-A:12, to pay or refund any bonds issued pursuant to this section or interest thereon, or to pay the costs and expenses of the authority. The principal of, and premium, if any, and interest on all bonds shall be payable solely by the authority in accordance with the provisions of this chapter. The bonds shall be issued by the authority in such amounts as the board shall determine, not exceeding in the aggregate at any time \$25,000,000. Bonds of each issue shall be dated, shall bear interest at such rate or rates, including rates variable from time to time as determined by such index, banker's loan rate or other method as may be determined by the board, and shall mature at such time or times as may be determined by the board, except that no bonds shall

mature more than 30 years from their date of issue. Bonds may be made redeemable before maturity either at the option of the authority or at the option of the holder, or upon the occurrence of specified events, at such price or prices and under such terms and conditions as may be fixed by the board prior to the issuance of the bonds. The board shall determine the form and details of the bond. The bonds may be sold in such manner, either at public or private sale, for such price, at such rate or rates of interest, or at such discount in lieu of interest as the board may determine.

II. Every bond shall be signed on behalf of the authority by 2 persons designated by the board. One person shall be a member of the board who is also the chairman of the board, or the vice chairman of the board, or the treasurer of the authority, or an assistant treasurer of the authority. The other person shall be any member of the board or the executive director of the authority. The signatures may be manual or facsimile but at least one signature on every bond shall be manual, unless the bond bears a manual authentication or certification by a bank, trust company or other financial institution, in which case both signatures on behalf of the authority may be facsimile. Interest coupons, if any, shall bear the facsimile signature of one of the persons signing the bond on behalf of the authority. Bonds shall also bear the seal of the authority or a facsimile of the seal. Bonds executed as provided in this paragraph shall be valid notwithstanding that any or all of the persons whose signatures appear on the bond shall have ceased to hold office before delivery of and payment for the bond.

III. Any bonds issued under this chapter may be issued pursuant to and entitled to the benefits of a security document between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the state, or by a security document directly between the authority and the purchasers of the bonds. Such security document shall be in such form and executed in such manner as may be determined by the board. Such security document may include the mortgage, pledge, or grant of a security interest in any property of the authority and may pledge or assign, in whole or in part, the revenues held or to be received by the authority, any contract or other rights to receive the revenues, whether then existing or thereafter coming into existence and whether then held or thereafter acquired by the authority, and any proceeds thereof. Such security documents may contain provisions for protecting and enforcing the rights, security, and remedies of the bondholders as may, in the discretion of the board, be reasonable and proper and not in violation of law. Such security documents may include provisions defining defaults and providing for remedies in the event of defaults, which may include

the acceleration of maturities and the enforcement of any mortgage, pledge or security interest, and covenants setting forth the duties of, and limitations on, the authority in relation to the custody, safeguarding, investment, and application of moneys, the issue of additional or refunding bonds, the fixing, revision and collection of fees and other revenues, the use of bond proceeds, the establishment of reserves, the acquisition of any property or interest therein or undertaking of any project, any contracts relating thereto and subsequent amendments of such provisions and contracts. It shall be lawful for any bank or trust company to act as a depository or trustee of the proceeds of bonds, revenues, or other moneys under a security document and to furnish such indemnification or to pledge such securities and issue such letters or lines of credit or credit facilities as may be required by the authority acting under the paragraph. Any such security document may set forth the rights and remedies of bondholders and of the trustee and may restrict the individual right of action by bondholders.

IV. Any bonds issued under authority of this chapter may be issued pursuant to lines of credit or other banking arrangements under such terms and conditions not inconsistent with this chapter, and under such agreements with the purchasers or makers thereof, as the board may determine to be in the best interests of the authority. In addition to other security provided herein or otherwise by law, bonds issued by the authority under this section may be secured, in whole or in part, by insurance or by letters or lines of credit or other credit facilities issued to the authority by any bank, trust company or other financial institution, within or without the state, and the authority may make any pledge, mortgage, assignment or security interest in respect of its property and revenues as security for the reimbursement by the authority to the issuers of such letters or lines of credit, insurance or credit facilities, or any payments made thereunder.

V. Any mortgage, pledge or security interest made by the authority under this subdivision shall be valid and binding and shall be deemed continuously perfected for the purposes of RSA 382-A and all other laws from the time when the mortgage, pledge, or security interest is made. The property or revenues so mortgaged, pledged, or subjected to a security interest then held or thereafter acquired or received by the authority shall immediately be subject to the lien of such mortgage, pledge, or security interest without any physical delivery or segregation thereof or further act. The lien of such mortgage, pledge, or security interest shall be valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the authority, irrespective of whether such parties have notice thereof. No such property or revenues may be used in a manner

inconsistent with the terms governing such mortgage, pledge, or security interest. Any agreement by which a pledge or security interest in personal property is created under this chapter shall be filed or recorded in the records of the secretary of state. Any mortgage or other agreement by which a security interest in real property is created under this chapter shall be filed with the register of deeds for the county in which such property is located.

VI. Any owner of a bond issued under the provisions of this section and any trustee under a security document securing the same, except to the extent the rights given in this paragraph may be restricted by such security document, may bring suit upon the bonds and may, either at law or in equity, by suit, action, mandamus, or other proceeding for legal or equitable relief, protect and enforce any and all rights under the laws of the state granted hereunder or under such security document, and may enforce and compel performance of all duties required by this chapter or by such security document to be performed by the authority or by any director or officer of the authority.

VII. The authority, when authorized by the board, may issue refunding bonds for the purpose of paying any bonds issued under the provisions of this section at or prior to maturity or upon acceleration or redemption. Refunding bonds may be issued at such times prior to the maturity or redemption of the bonds being refunded as the board may determine. The refunding bonds may be issued in sufficient amounts to pay or provide the principal of the bonds being refunded, together with any redemption premium thereon, any interest accrued or to accrue to the date of payment of such bonds, the expenses of issue of the refunding bonds, the expenses of redeeming the bonds being refunded, and such reserves for debt service or other expenses from the proceeds of such refunding bonds as may be required by a security document securing the bonds. The authorization and issue of refunding bonds, the maturities and other details thereof, the security therefor, the rights of the holders thereof, and the rights, duties and, obligations of the authority in respect to the same shall be governed by the provisions of this chapter relating to the issue of bonds other than refunding bonds insofar as the same may be applicable.

VIII. Any debt service fund, construction fund, debt service reserve fund, or other fund established in connection with the issuance of bonds under this chapter shall be kept separate from other moneys of the authority. The moneys deposited in any such funds, together with the income derived from any investments held as part of such funds, shall be expended without further authorization or appropriation as provided for in the security document establishing such funds.

IX. Moneys in any fund or account created under the provisions of this chapter, subject to the terms and provisions of any security document applicable thereto, may be invested. Except as otherwise provided by any such security document, obligations so purchased as an investment of money in said fund or account shall be deemed at all times to be part of said fund or account, and the interest thereon and any profit arising from the sale thereof shall be credited to said fund or account, and any loss resulting on their sale shall be charged to said fund or account, respectively.

X. The state does hereby pledge to and agree with the holders of bonds issued under this chapter that the state shall not limit or alter the rights hereby vested in the authority to fulfill the terms of any agreements made with the holders of such bonds or in any way impair the rights and remedies of such holders until such bonds, together with the interest on them, with the interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged. The authority is authorized to include this pledge and agreement of the state in any agreement with the holders of such bonds.

XI. Bonds issued under this section and their transfer and income, including any profit made on their sale or transfer, shall at all times be exempt from all taxation by or within the state.

XII. Notwithstanding any of the provisions of this chapter or any recitals in any bonds issued under this section, all such bonds shall be deemed to be investment securities under RSA 382-A.

162-A:15 Eligible Investments. Bonds issued under the provisions of this chapter are hereby made securities in which all public officers, agencies and authorities of the state and of its political subdivisions, insurance companies, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any state or municipal officer or any agency, authority or political subdivision of the state for any purpose for which the deposit of bonds or obligations of the state or any political subdivision is now or may hereafter be authorized by law.

162-A:16 State Bond Guarantee.

I. In view of the general public benefits expected to be derived from the authority's activities under this chapter, and their contribution to the social and economic prosperity of the state and its political subdivisions, the governor and council may award an unconditional state guarantee of the principal and interest thereon of bonds issued under this chapter. The full faith and credit of the



state shall be pledged for any such guarantees of principal and interest, but the total amount of the principal of bonds guaranteed by the state under this section shall not exceed \$25,000,000 plus interest. The governor, with the advice and consent of the council, is authorized to draw his warrant for such a sum out of any money in the treasury not otherwise appropriated, for the purpose of honoring any guarantee awarded under this section. The state's guarantee shall be evidenced on each guaranteed bond by an endorsement signed by the state treasurer in substantially the following form:

The state of New Hampshire hereby unconditionally guarantees the payment of the whole of the principal and interest thereon of the within bond, and for the performance of such guarantee the full faith and credit of the state are pledged.

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State Treasurer

II. No state guarantee shall be awarded under this section unless the guaranteed bonds are secured by, among other things, any and all fees to be received by the authority in connection with bonds issued under RSA 162-I in an original principal amount equal to or greater than \$1,500,000. In connection with the award of a state guarantee, the governor and council may impose such other terms and conditions as they may deem appropriate concerning the bonds, the use of any property or revenues of the authority, and reimbursement to the state if any state funds are used to honor the guarantee. Such terms and conditions may be contained in an agreement between the state and the authority, to be executed on behalf of the state by the governor and the state treasurer and on behalf of the authority by its chairman, vice chairman, or executive director.

III. Before awarding any state guarantee of bonds under this section the governor and council, after a hearing, shall have made the following findings:

(a) The award of the state guarantee will contribute significantly to the success of the bond issue and the authority's programs under this chapter.

(b) Reasonable and appropriate measures have been taken to minimize the risk of loss to the state.

IV. The signature of the state treasurer on an endorsement of a state guarantee may be manual or facsimile.

162-A:17 Programs for Public Purpose; Required Findings.

I. The authority shall not take any action described in RSA 162-A:7, IV, 162-A:9, III, 162-A:10, IV, or 162-A:12, V, and the governor and council shall not award any guarantee under RSA 162-A:8, or 162-A:10, III unless the governor and council have made the following findings:

(a) The proposed action will serve a public use and provide a public benefit.

(b) The proposed action is within the policy of, and the authority conferred by, this chapter.

(c) The proposed action will preserve or increase the social or economic prosperity of the state and one or more of its political subdivisions, and will promote the general welfare of the state's citizens.

(d) The proposed action will promote the orderly development of business activities, create or preserve employment opportunities, or protect the physical environment.

(e) The applicable special findings in paragraph II of this section.

II. Before approving any action referred to in paragraph I, the governor and council shall also make the applicable special findings:

(a) If the action is the expenditure of money pursuant to RSA 162-A:7, the governor and council shall find that the expenditure is consistent with local or regional development plans and policies.

(b) If the action is the award of a state guarantee pursuant to RSA 162-A:8, the governor and council shall find that:

(1) The award of the guarantee will contribute significantly to the success of the financing; and

(2) Reasonable and appropriate measures have been taken to minimize the risk of loss to the state and to ensure that any private benefit from the award of the guarantee will be only incidental to the public purpose served thereby.

(c) If the action is making of a temporary loan pursuant to RSA 162-A:9, the governor and council shall find that:

(1) The loan will be a significant factor in the continued operation, competitiveness, or expansion of the business receiving it;

(2) The business is of social or economic importance to the region or community in which it is located; and

(3) The risk of loss to the authority as a result of making the loan is reasonable under the circumstances.

(d) If the action is the acquisition of loans from local development organizations pursuant to RSA 162-A:10, the governor and council shall find that:

(1) Such acquisition will make available funds for the local or regional promotion, encouragement, or development of business activities in an area where such funds are needed; and

(2) The loans being acquired do not impose an undue risk of loss to the authority.

(e) If the action is the award of a state guarantee pursuant to RSA 162-A:10, III, the governor and council shall find that:

(1) The award of the guarantee is necessary to sell the loans at a reasonable price;

(2) The proposed use of the proceeds of sale by the authority will promote business activities within the state consistent with the purposes of this chapter; and

(3) Reasonable and appropriate measures have been taken to minimize the risk of loss to the state.

(f) If the action is the establishment of a CAP fund or the execution or amendment of a CAP participation agreement pursuant to RSA 162-A:12, the governor and council shall find that:

(1) The proposed participating state bank is qualified to participate under the provision of this chapter;

(2) Appropriate measures have been taken to ensure that the participating state bank makes only CAP loans meeting the requirements of RSA 162-A:12, IV;

(3) The proposed CAP participation agreement complies with RSA 162-A:12, III; and

(4) Reasonable precautions have been taken to minimize the risk of loss to the CAP fund.

162-A:18 Hearings. Any hearing required to be held by the governor and council under this chapter may be held by their designee, who shall make a report of the hearing to the governor and council prior to the making of any findings. Such hearings shall be for the information of the governor and council and shall not be treated as determining the rights, duties, or privileges of any entity or person.

162-A:19 Meetings. The authority shall hold its meetings in a building that is accessible to persons with disabilities. Five voting members of the board shall constitute a quorum, and the affirmative vote of 5 members shall be necessary for any action taken by the authority. No vacancy in the membership of the board shall impair the power of a quorum to exercise all rights and perform all duties of the authority.

162-A:20 Revenues of Authority. The revenues received by and due to the authority from any and all sources under this chapter and RSA 162-I shall be retained by the authority and shall be used in such manner as may be determined by the authority consistent with the provisions of this chapter. It is the intent of the legislature that the authority be self-funding and that payment of its operating expenses shall not require state appropriation.

162-A:21 Reports. The accounts of the authority shall be subject to an annual audit performed by an independent certified public accountant selected by the authority. The authority shall submit annually to the speaker of the house of representatives, the president of the senate, the committees on economic development of the house of representatives and the senate, and the governor and council a report on its operations and its audited financial statements for the preceding fiscal year.

162-A:22 Tax Exemption and Payment for Services in Lieu of Taxes. Any property while owned by the authority is declared to be public property and shall be exempt from all taxes and special assessments of the state or any political subdivision of the state. In lieu of such taxes and special assessments, the state or the political subdivision shall require any business that is a tenant, occupant or user of the property to make payments annually to the municipality in which the property is located, for its just share of the public expense, including, but not limited to, education, highway maintenance, fire and police protection and other similar public expenses and governmental services. The board of tax and land appeals shall determine, after a hearing, that the payments constitute a just share of the public expense.

162-A:23 Construction and Effect of Other Laws.

I. The powers conferred by this chapter are supplemental and alternative to other powers conferred by law, and this chapter is intended as an independent and comprehensive conferral of powers to accomplish the purposes set forth in RSA 162-A:1.

II. No notice, hearing, proceedings or approval shall be required with respect to any action taken under this chapter except as provided in this chapter.

III. Purchases and contracts required in connection with a project may be made or let without regard to any provision of law relating to public purchases or contracts.

IV. The provisions of this chapter shall be liberally construed in order to effect its purposes.

V. If any provision of this chapter shall be held invalid in any circumstance, such invalidity shall not affect any other provisions or circumstances.

VI. This chapter shall be construed in all respects so as to meet all constitutional requirements. In carrying out the purposes and provisions of this chapter, all steps shall be taken which are necessary to meet constitutional requirements whether or not such steps are required by statute.

4 New Section; State Guarantee. Amend RSA 162-I by inserting after section 9 the following new section:

162-I:9-a Additional State Guarantee.

I.(a) The governor and council may award an unconditional state guarantee of the principal of and interest on bonds issued under this chapter. The full faith and credit of the state shall be pledged for any such guarantee, but the total outstanding principal amount of bonds guaranteed by the state under this section at any time shall not exceed \$10,000,000, provided that such amount shall be increased by \$10,000,000 on each January 1 beginning January 1, 1993, until the total outstanding principal amount of bonds guaranteed by the state

under this section at any time shall not exceed \$50,000,000. The governor, with the advice and consent of the council, is authorized to draw his warrant for such sum as may be necessary out of any money in the treasury not otherwise appropriated, for the purpose of honoring any guarantee awarded under this section. The state's guarantee shall be evidenced on each guaranteed bond by an endorsement signed by the state treasurer in substantially the following form:

The state of New Hampshire hereby unconditionally guarantees the payment of the whole of the principal and interest on the within bond and for the performance of such guarantee the full faith and credit of the state are pledged.

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State Treasurer

(b) In connection with the award of a state guarantee, the governor and council may impose such terms and conditions as they may deem appropriate concerning the bonds, the use and operation of the eligible facilities, the reimbursement to the state if any state funds are used to honor the guarantee and any other matters necessary or desirable to carry out the purposes of this section. Such terms and conditions may be contained in an agreement entered into by the state, the authority, and user of the eligible facility to be executed on behalf of the state by the governor and the state treasurer and on behalf of the authority by any 2 persons authorized to execute bonds under RSA 162-I:8.

II. No state guarantee shall be awarded under this section unless the bonds are secured by a letter of credit, bond insurance policy, or similar credit enhancement issued by a bank, trust company, insurance company or other financial institution acceptable to the authority and the governor and council.

III. No proceeds of any bonds awarded a state guarantee under this section shall be used to make a loan of greater than \$1,500,000 to any user.

IV. The governor and council shall not award any state guarantee under this section unless they have found after a hearing that such guarantee will serve a public use and provide a public benefit and have determined that the authority's financing of the project and the state's guarantee of the bonds will be within the policy of, and the authority conferred by, this chapter.

V. Before awarding any state guarantee of bonds under this section the governor and council shall first make the findings required by RSA 162-I:9, except the finding required by RSA 162-I:9, II(b)(4), taking into account the state guarantee. In addition, the governor and council shall also find that:

(a) The award of a state guarantee will contribute significantly to the success of the financing; and

(b) Reasonable and appropriate measures have been taken to minimize the risk of loss to the state and to ensure that any private benefit from the award of a state guarantee will be only incidental to the public purpose served thereby.

VI. The hearing required by this section may be held and the findings and determinations so required may be made in conjunction with the proceedings required by RSA 162-I:9.

VII. Whenever a state guarantee of bonds is awarded under this section, the statement requirement in the first sentence of RSA 162-I:8, III shall be appropriately modified and the finding required by RSA 162-I:9, II(b)(4) shall not be made.

5 New Paragraph; Signature of State Treasurer. Amend RSA 162-I:8 by inserting after paragraph IV the following new paragraph:

V. The signature of the state treasurer on an endorsement of a state guarantee of a bond may be manual or facsimile.

6 Conforming Amendment; Reference to Additional State Guarantee. Amend RSA 162-I:10, I(a) and (b) to read as follows:

(a) From moneys received or to be received under the provisions of a financing or security documents entered into under this chapter or derived from the exercise of the authority's rights under those instruments; [or]

(b) **As permitted by RSA 162-I:9 or RSA 162-I:9-a; or**

(c) As may be required by law other than the provisions of this chapter.

7 Who May Serve as Trustees. Amend RSA 162-I:12 to read as follows:

162-I:12 Trustees and Trust Funds. Any [national] bank [or any], trust company [doing business in this state or in the Commonwealth of Massachusetts], or any other financial institution [doing business in this state] which has power to act as a trustee, **whether within or outside the state** may serve as trustee for the benefit of bondholders under a security document. Such trustee may at any time own all or any part of the bonds issued under that security document, unless otherwise provided therein. All [monies] **moneys** received or held by the authority or by a trustee pursuant to a financing or security document, other than funds received or held by the authority for its own use, shall be deemed to be trust funds and shall be held and applied solely in accordance with the applicable document, but the person paying such money to the authority or the trustee shall not in any way be bound to see to the proper application thereof.

8 Hearings Added. Amend RSA 162-I:16, II to read as follows:

II. No notice, **hearing**, proceedings or approval shall be required with respect to any action taken under this chapter except as pro-

vided in this chapter. **Any hearing required by RSA 162-I:9 or RSA 162-I:9-a shall be informational and shall not be treated as determining the rights, duties, or privileges of any entity or person.**

9 Name Change. Amend the chapter heading of RSA 162-I to read as follows:

[INDUSTRIAL DEVELOPMENT]  
**BUSINESS FINANCE AUTHORITY**  
REVENUE BONDS

10 Reference Change. Amend RSA 162-J:11, II to read as follows:

II. Action under this chapter may be in concert with the [industrial development] **business finance** authority acting under RSA 162-A or RSA [162-E] **162-I** or projects may be sold to such authority at any time during their development.

11 Reference Changes. Amend RSA 233:6, I to read as follows:

I. The commissioner of transportation, before commencing construction of any public road leading to a private recreational area, shall determine that sufficient funds are available to cover the costs of such construction whether from funds appropriated by the general court or from funds made available by the [industrial park] **business finance** authority under RSA 162-A[:6-b].

12 Reference Changes. Amend RSA 233:6, III to read as follows:

III. Any funds appropriated for redemption of a loan previously made by the [industrial park] **business finance** authority for construction of a public road to a private recreational area shall be in addition and added to the appropriation for construction and reconstruction of the department of transportation and shall be transferred to the [industrial park] **business finance** authority upon approval of the governor and council.

13 Name Change From Industrial Development Authority to Business Finance Authority. Amend the following RSA provisions by replacing "industrial development authority" with "business finance authority": RSA 162-I:1, V; 162-I:2, I-a; 162-M:1, V; 162-M:2; 162-M:3; 162-M:4 and 387:17-a.

14 Emergency Rules. The legislature declares that there is an urgent need for the programs created by sections 2 - 13 of this act. Therefore, notwithstanding any provisions of RSA 541-A to the contrary, the business finance authority may adopt emergency rules to implement the provisions of sections 2 - 13 of this act. The emergency rules authorized by this section shall remain effective until such time as the business finance authority adopts superseding rules under RSA 541-A. The business finance authority shall commence rulemaking implementing the provisions of sections 2 - 13 of this act no later than December 31, 1993.

15 Industrial Development Authority Study Committee Extended. Amend 1991, 149:1 to read as follows:

149:1 Study Committee Established; Industrial Development Authority. There is established a committee to study the restructuring of the industrial development authority to better assist new and expanding businesses in this state. The committee shall consist of 2 house members appointed by the speaker of the house; 2 senators appointed by the senate president; and 2 public members, with expertise in business and finance, appointed by the governor. The committee shall submit a report on its findings and recommendations for legislation to the speaker of the house, the senate president, and the governor, on or before [December 1, 1991] **November 1, 1992**. Legislative members of the committee shall receive mileage at the legislative rate.

16 Authorizing City of Dover to Develop Economic Development Projects. Amend 1972, 63:5 to read as follows:

63:5 Declaration of Need and Purpose. It is hereby declared that there is a need for the development of industrial **and other** facilities within the city of Dover in order to alleviate and prevent unemployment and underemployment in the city and the region in which the city is located, to insure the continued growth and prosperity of said city and region and to promote the general welfare of the citizens [thereof] **of the city of Dover** and of the state. It is the purpose of this act to authorize the city of Dover and the Dover Industrial Development Authority to foster and encourage the development of industrial facilities **and other economic development projects** by acquiring, developing and operating industrial parks within the city, with or without the use of city funds, and by aiding the construction and expansion of industrial facilities within the city, **and by implementing other authorized economic development projects**, without the use of city funds, through the issue of industrial development revenue bonds. The two industrial assistance programs authorized by this act are intended to be mutually independent, although such independence shall not preclude the financing of industrial facilities within an industrial park by the issue of revenue bonds; and all the powers herein conferred are intended to be in addition to and not dependent upon any powers conferred on said city or authority by chapter 546 of the Laws of 1971 or by any other law. It is further declared that the actions authorized by this act serve a public purpose and that in carrying out the provisions of this act the city and the authority shall be regarded as performing essential governmental functions.



17 Definition Added. Amend 1972, 63:6, III(k) to read as follows:

(k)(1) "Industrial development project"—the establishment or expansion of an industrial development facility within the city which is financed in whole or in part, by the issue of bonds.

(2) **"Other economic development project"—redevelopment activities pursuant to RSA 205, central business district activities pursuant to RSA 31 and other real property purchases, construction or property management authorized by the city in accordance with its powers conferred by any other law.**

18 Other Economic Projects Included. Amend the section heading of 1972, 63:14 to read as follows:

63:14 Powers of the Authority with Respect to Industrial Development **and Other Economic Development Projects.**

19 New Subparagraph; Other Economic Development Projects Added. Amend 1972, 63:14, I, by inserting after subparagraph (f) the following new subparagraph:

(g) To engage in other economic development projects, as defined in subparagraph (k) of paragraph III of section 6 of this act.

20 Statement of Intent. In enacting sections 21 - 30 of this act, the general court hereby declares that there is a need to allow:

I. Industrial development authorities to utilize expertise in real estate matters in the course of making decisions to enter leases as lessors of industrial facilities, and to monitor and enforce them, and to do so with lawful autonomy.

II. Cities to empower their industrial development authorities to utilize expertise in real estate matters to enter into other real estate transactions, provided that no such transaction shall commit a city to make expenditures in excess of income from appropriations made in the sole discretion of the city's governing body and from leases and subleases of the subject premises, which transactions may include entering into purchases or options to purchase or entering into leases as lessees.

III. The governing bodies of cities to experiment with expanded autonomy of industrial development authorities for such limited terms as they shall decree by ordinance.

IV. Industrial development authorities to make appropriate findings while respecting the sensitive, confidential or proprietary nature of information supplied by prospective vendors, vendees, lessors, or lessees.

21 New Paragraph; Definition Added. Amend RSA 162-G:3 by inserting after paragraph III the following new paragraph:

III-a. "Industrial development authority" shall mean the board of directors of a corporation described in RSA 162-G:15 or a board described in RSA 162-G:15-a.

22 Governmental Unit as Lessee. Amend RSA 162-G:3, V to read as follows:

V. "Lease" shall mean, **in the case where the governmental unit is the lessor or the sublessor**, a written instrument to which the governmental unit and a tenant are parties and which provides for the use and occupancy of an industrial facility and the payment of rent **and, in the case where the governmental unit is the lessee**, a written instrument to which the governmental unit and an owner are parties and which provides for the use and occupancy of an industrial facility by the governmental unit's existing or future sublessees, and the payment of rent by the governmental unit, which rent shall not exceed in any event the total of the amounts appropriated by the governing body for the purpose of meeting such rent and the revenue derived from the sublessee in excess of the governmental unit's costs in meeting its obligation to the sublessee.

23 Option Contracts. Amend RSA 162-G:4, I to read as follows:

I. To engage in projects and to acquire, **lease as lessee**, own and dispose of industrial facilities within the state, **and to enter into option contracts to allow a governmental unit to acquire industrial facilities at or before some certain date, at some certain price, or below some certain price.**

24 Governmental Unit as Lessee. Amend RSA 162-G:4, III to read as follows:

III. To lease industrial facilities as owner and lessor **or as lessee and sublessor.**

25 References to Industrial Development Authority Added. RSA 162-G:4-a is repealed and reenacted to read as follows:

162-G:4-a Sales and Leases. The sale or lease of any industrial facility or any part thereof shall be on such terms and conditions as is deemed appropriate by the governing body or the industrial development authority to which the power to make such findings has been delegated, except that no property of the governmental unit shall be sold or leased for less than the fair value of such property as determined by the governing body or the industrial development authority. In the case of findings made by the governing body as to fair value of the property for the purpose of its sale or lease, the governing body shall obtain and consider an opinion as to its value for such purpose furnished by a qualified, independent real estate appraiser certified under RSA 310-B. Any determination of fair value reached by the governing body or the industrial development authority in good faith shall be conclusive.

26 Sublease Added. Amend the introductory paragraph of RSA 162-G:5, I to read as follows:

**I. Every lease or sublease entered into by a governmental unit as lessor or sublessor shall:**

27 Sublease Added. Amend the introductory paragraph of RSA 162-G:5, II to read as follows:

**II. Any lease or sublease entered into by a governmental unit as lessor or sublessor may:**

28 Amount of Rent. Amend RSA 162-G:5, II(d) to read as follows:

**(d) Allocate responsibility between the governmental unit and the tenant for making purchases and contracts required for the project, provided that in the case of leases in which the governmental unit acts through its industrial development authority, any allocation of responsibility to the governmental unit shall not exceed the total of the amounts appropriated by the governing body for purposes of meeting such responsibility, and the rent derived from the lease in excess of costs of servicing bonds, unless the governing body ratifies the lease;**

29 Approval by Industrial Development Authority. Amend RSA 162-G:8 to read as follows:

**162-G:8 Approval of Governing Body or Industrial Development Authority.**

**I. Except as provided in paragraph II, the governmental unit shall not acquire any industrial facility, or execute any lease or trust indenture or issue any bonds with respect thereto, unless the governing body has found after a hearing that the proposed acquisition, leasing, operation and use of such industrial facility will serve a public use and provide a public benefit and that such acquisition and leasing will be within the policy of and the authority conferred by this chapter. The city council shall, before or after hearing, determine the appropriateness of proceeding under this chapter as required under RSA 162-G:2. The determination required by this section may be made by the governing body only after finding to its satisfaction that:**

**[I.](a) The proposed industrial project can be feasibly located on the intended site and required utilities and access are or will be provided; and**

**[II.](b) The establishment and operation of the industrial facility will alleviate or prevent unemployment or underemployment, either in whole or in part, in the area in which such industrial facility is located; and**

**[III.](c) Such industrial facility will consist of land, or land and an industrial building, or buildings, which are suitable for industrial, manufacturing, waste processing or warehousing purposes; and**

[IV.](d) Any proposed purchasers or tenants have the skills and financial resources necessary to operate the industrial facility successfully; and

[V.](e) Adequate provision has been, or will be, made for the payment of the cost of the construction of such industrial facility and that under no circumstances will the governmental unit be obligated, directly or indirectly, for the payment of the cost of construction of such industrial facility, or for the payment of the principal of, or interest on, any obligations issued to finance such construction from funds other than those received under the provisions of the lease or the trust indenture except to the extent permitted by this chapter; and

[VI.](f) Adequate provision has been, or will be, made in the lease for the payment of all costs of operation, maintenance, and upkeep of such industrial facility by the tenant or occupant so that under no circumstances will the governmental unit be obligated, directly or indirectly, for the payment of such costs from funds other than those received under the provisions of the lease or trust indenture except to the extent permitted by this chapter; and

[VII.](g) The proposed acquisition, leasing, operation and use of such industrial facility will aid in the development, growth and prosperity of the governmental unit in which such industrial facility is located, or of the governmental unit undertaking the project.

**II. Notwithstanding the requirements of paragraph I of this section, the governmental unit acting through its industrial development authority may acquire facilities, purchase options to buy industrial facilities, and execute agreements to purchase leases and notes and mortgages with respect thereto, if the industrial development authority makes the findings and determinations required under paragraph I, provided that no contract entered into by the industrial development authority under this section shall commit the governmental unit to make expenditures in excess of the total of appropriations by the governing body specifically for meeting the commitments made and the income from leases and subleases of the subject premises.**

**III. Notwithstanding RSA 91-A, the hearings required by this section may be held in nonpublic session, and reports of the investigations which may be conducted in aid of the determinations and findings required by this section may be kept confidential, to the extent necessary in respect of the sensitive, confidential or proprietary nature of information supplied by prospective vendors, including optionors; vendees, including optionees; lessors; lessees; and sublessees of industrial facilities.**

30 Members of Industrial Development Authorities. Amend RSA 162-G:15-a to read as follows:

162-G:15-a Action Through Industrial Development Authority.

I. In any city which adopts this chapter, the powers and duties granted by this chapter, except those related to findings and approvals **which are specified in this chapter as the exclusive duties** of the governing body and the obligations of the governmental unit, may be exercised by the city acting through an industrial development authority established under this section, **to the extent the governing body may delegate its powers exercised under this chapter.**

II. The governing body may establish an industrial development authority to exercise such powers and duties in the following manner:

(a) The authority shall consist of a board of directors of not less than 9 nor more than 15 members appointed for 3-year terms. A majority of the board members shall reside within the boundaries of the governmental unit. [In a city] **The members shall be chosen for their expertise, experience and abilities in business, industry, finance, real estate, government, and law. The members shall be appointed by the governing body or the city manager in the manner provided in the city charter or by ordinance in a manner consistent with the city charter, but if neither the charter nor any ordinance shall address the manner of appointments to governmental boards generally or the industrial development authority board specifically,** the board members shall be appointed by the mayor subject to confirmation by the city council. The terms of the initial members of the board so established shall be staggered so that 1/3, or as close to 1/3 as possible, of the board members will be appointed each year.

(b) The governing body may provide that such city officers as it designates shall serve as ex officio members of the board in addition to those members appointed under subparagraph (a).

III. All actions by the authority under this chapter shall be authorized by resolutions of the board passed on the affirmative votes of at least 2/3 of the board members present and voting. **The governing body may delegate its powers to the industrial development authority only to the extent provided in this chapter. Such delegation need not be as broad as allowed under this chapter, and may be so limited in scope or duration as the governing body shall decree by ordinance. In the absence of such limit, an industrial development authority shall be presumed to have all of the powers for which delegation is authorized by this chapter.**

31 Investments by Retirement System Board of Trustees. Amend RSA 100-A:15, I to read as follows:

I. The members of the board of trustees shall be the trustees of the several funds created hereby and shall have full power to invest and reinvest such funds. The members of the board of trustees shall also have the power to invest and reinvest such funds in participation units in the public deposit investment pool established pursuant to RSA 383:22. **The members of the board of trustees may also invest and reinvest a portion of the assets of the retirement system in participation with entities authorized or chartered by the general court and entities licensed by the United States Small Business Administration to lend or invest in commercial and industrial enterprises in the state of New Hampshire.** Said trustees shall have full power to hold, purchase, sell, assign, transfer, and dispose of any of the securities and investments in which any of the funds created hereby have been invested, as well as the proceeds of such investments. All of the assets and proceeds, and income therefrom, of the New Hampshire retirement system, and all contributions and payments made thereto, shall be held, invested or disbursed in trust solely in the interest of the members and beneficiaries of the system for the exclusive purpose of providing those benefits and defraying those reasonable administrative expenses provided for under this chapter. In the management, investment and reinvestment of system assets so held in trust hereunder, the system's board of trustees shall exercise the judgment and care under the circumstances then prevailing, which persons of prudence, discretion and intelligence, acting in a like capacity and familiar with such matters, would use in the conduct of a pension plan of like character and with like aims as the system, and by diversifying investments of the system so as to minimize the risk of large losses to the trust fund.

32 Investments by Retirement System Board of Trustees. Amend RSA 100-A:15, I to read as follows:

I. The members of the board of trustees shall be the trustees of the several funds created hereby and shall have full power to invest, and reinvest such funds, subject to all the terms, conditions, limitations, and restrictions imposed by the laws of the state of New Hampshire upon domestic life insurance companies in the making and disposing of their investments. Said trustees may invest and reinvest such funds in shares of cooperative banks and building and loan associations located in this state or in international investments, provided that international investments shall not exceed 15 percent of the several funds that are invested and reinvested, and may make deposits in savings banks or trust companies or in national banks and subject to like terms, conditions, limitations, and

restrictions. The members of the board of trustees shall also have the power to invest and reinvest such funds in participation units in the public deposit investment pool established pursuant to RSA 383:22. Said trustees shall have full power to hold, purchase, sell, assign, transfer, and dispose of any of the securities and investments in which any of the funds created hereby have been invested, as well as the proceeds of such investments, provided, however, that the trustees or their designees shall be exempt from the provisions of RSA 411-A:6, III, in making investments. **The members of the board of trustees may also invest and reinvest a portion of the assets of the retirement system in participation with entities authorized or chartered by the general court and entities licensed by the United States Small Business Administration to lend or invest in commercial and industrial enterprises in the state of New Hampshire.** The board of trustees shall, to the greatest extent possible, use the funds of the retirement system to benefit and expand the economic climate within the state of New Hampshire. The use of such funds by the board shall be consistent with sound investment practices.

33 New Subdivision; Economic Development Matching Grants Program. Amend RSA 12-A by inserting after section 31 the following new subdivision:

### **Economic Development Matching Grants Program**

12-A:32 Economic Development Matching Grants Program. An economic development matching grants program is established to assist municipalities in promoting themselves to prospective businesses. For the purposes of this subdivision "program" means the economic development matching grants program.

I. The department of resources and economic development shall administer an economic development matching grants program in cooperation with a program screening committee. The funds appropriated for this program shall be expended for grants for advertising programs entered into by municipalities which are designed to promote the location of new businesses in the state of New Hampshire.

II.(a) The screening committee shall consist of the director of the division of economic development and 6 other members appointed as follows:

(1) The director of the office of business and industrial development, or designee.

(2) One member appointed by the governor and council upon nomination by the New Hampshire Association of Industrial Agents.

(3) One member appointed by the governor and council upon nomination by the New Hampshire Chambers of Commerce.

(4) One member appointed by the governor and council upon nomination by the New Hampshire Municipal Association.

(5) The executive director of the business finance authority.

(6) The executive director of the community development finance authority.

(b) Members, other than the director of the division of economic development, shall serve for a term of 3 years and until their successors are appointed and qualified.

III. The screening committee shall elect its own chairman. Members may designate an alternate with the approval of the chairman. A majority of the members of the committee or their alternates shall constitute a quorum.

IV. Members of the screening committee shall not be compensated; however, the commissioner of resources and economic development may set aside up to one percent of the funds appropriated for the program in any fiscal year to reimburse committee members for their direct expenses associated with the program. The commissioner shall review and approve all requests for reimbursement.

V. Funds appropriated to the program shall only be made available to municipalities as may be certified by the screening committee with the approval of the commissioner of the department of resources and economic development.

VI. Grant awards shall require 50 percent matching funds from private sources. Grants shall not be used for the administrative salaries or overhead expenses of any applicant selected for a grant.

VII. Grant applications shall be reviewed by the screening committee which shall recommend approval or disapproval of applications to the commissioner of resources and economic development. A recommendation for disapproval by the screening committee or the commissioner shall be in writing with the reasons for disapproval stated.

VIII. Funds appropriated for the program for the first fiscal year of any biennium shall not lapse and shall be available for expenditure during the second fiscal year of the biennium. All funds which have not been expended by the end of the second fiscal year of a biennium shall lapse to the general fund.

IX. The commissioner of resources and economic development shall, with the advice of the screening committee, adopt rules under RSA 541-A after public hearing governing the program. These rules shall include:

(a) A description of the program, stating the general course and method of its operations and the methods by which the municipalities may obtain information or make submissions or requests.

(b) The procedures and criteria used to certify municipalities eligible for matching grants.



(c) The application process, including the information required of applicants.

(d) The procedures and criteria used to evaluate grant applications.

(e) Procedures for the administration of grants by recipients including reporting requirements.

34 Funding. Section 33 of this act shall be funded from the New Hampshire economic development fund established in RSA 12-A:2-e.

35 Study Committee on Financial Management of Public Funds.

I. A committee is hereby established to study the financial management of public funds. The committee shall consist of 3 senators, appointed by the senate president, and 3 house members, appointed by the speaker of the house.

II. The committee shall have the following responsibilities:

(a) To study the integrated financial system to ensure that public funds are invested at optimal yields and maturities.

(b) To study the feasibility of enabling the state treasurer and municipal treasurers to deposit public funds, possibly at discounted rates, in New Hampshire banks which participate in public finance programs chartered or authorized by the general court.

(c) To develop appropriate standards of participation in public finance programs which would serve to determine the eligibility of depository institutions for a public investment program.

III. Committee members shall receive mileage at the legislative rate.

IV. The committee shall submit a report on its findings, including any recommendations for legislation, to the senate president and the speaker of the house on or before November 1, 1992.

by a qualifying venture capital fund during a taxable period, and qualifying venture capital investments made by such fund for said period.

39 New Paragraph; Deduction from Business Profits Tax. Amend RSA 77-A:4 by inserting after paragraph XVI the following new paragraph:

XVII. A deduction equal to any contribution made to a qualifying venture capital fund during the applicable taxable period.

40 Study Committee on Economic Development Established.

I. A committee is hereby established to study the desirability and the feasibility of enabling municipalities to grant abatements of property tax for purposes of economic development.

II. The committee shall consist of the following members:

(a) Three senators; one from the economic development committee, one from the ways and means committee, and one from the public affairs committee, appointed by the senate president.

(b) Three representatives; one from the economic development committee, one from the ways and means committee, and one from the municipal and county government committee.

III. Committee members shall receive mileage at the legislative rate.

IV. The committee shall submit a report on its findings, including any recommendations for legislation, to the senate president and the speaker of the house on or before November 1, 1992.

**41 Effective Date.**

I. Sections 1 - 15 and 35 of this act shall take effect upon its passage.

II. Section 32 of this act shall take effect July 1, 1995, at 12:02 a.m.

III. The remainder of this act shall take effect 60 days after its passage.

### **AMENDED ANALYSIS**

I. Section 1 of the bill is a general purpose statement.

II. Sections 2 - 14 of this bill expand and modify the powers of the industrial development authority. The name of the authority is changed to the business finance authority.

III. Section 15 extends the reporting date of the committee established under 1991, 149:1 to study the industrial development authority from December 1, 1991, to November 1, 1992.

IV. Sections 16 - 19 authorize the Dover Industrial Development Authority to engage in redevelopment activities.

V. Sections 20 - 30 of the bill allow the expansion of the role of local industrial development authorities in real estate matters under RSA 162-G.

VI. Sections 31 - 32 allow the New Hampshire retirement system board of trustees to invest and reinvest a portion of the assets of the retirement system in participation with entities authorized or chartered by the general court and entities licensed by the United States Small Business Administration to lend or invest in commercial and industrial enterprises in the state of New Hampshire.

VII. Sections 33 - 34 establish an economic development matching grants program to assist municipalities in promotions to encourage businesses to relocate to the applicant's municipality. These sections establish a committee to screen applicants for the grants, which will require 50 percent matching funds from private sources. The sections grant rulemaking authority, with the advice of the screening committee, to the commissioner of resources and economic development.

VIII. Section 35 establishes a legislative committee to study financial management of public funds.

IX. Sections 36 - 39 create incentives for businesses to invest in new enterprises by allowing a deduction from income for purposes of the business profits tax equal to the amount of contributions to a qualifying venture capital fund.

X. Section 40 establishes a legislative committee to study property tax abatements for economic development.

SENATOR DUPONT: I think that this will be the bill that perhaps defines the strength of the package that we put forward today. It will effectively answer the questions, I believe, of those who have stood on this floor and asked the question of what does this do for my district? I don't believe that there is anyone that sits in this room that has not heard the cries of anguish from our business community about the need for assistance and procuring adequate capital for them to continue to operate their business and also for them to expand their business. I just had handed out a summary on 450 which I think will effectively define what this portion of the bill on the Industrial Development Authority talks about. You have to go back to last session, and one of the actions that this Senate took last session was to adopt a piece of legislation requiring the Industrial Development Authority or the legislature to investigate ways of restructuring the idea. The critical component of this legislation is under the existing IDA language which we are going to leave in place. So we are not going to take away any of the authority that the IDA presently has, but in essence what the recommended changes that we are making do, is it allows the IDA to go out and help small businesses. That is the key. Let me just run you through, real quickly, the five changes, the five programs that are set up by the piece of legislation that are important. The first thing that this restructuring will do, it will allow the new Business Finance Authority, which is the name that the IDA will have to go into your local communities, and if you have an Industrial Development Authority or if your community is talking about having an Industrial Development Authority, to go out and purchase industrial land or build buildings for businesses as a way of attracting business to your community. If you have an existing Industrial Development Authority that is already out there that owns land and they want to put a road on it or build on it, we will have the capability to go to that local Development Authority and provide them with financing to acquire maybe a business that is already there that has a building that it wants to move into or an existing building that they need to acquire in order to keep a business there. This will give them the authority to play a role in what goes on at the local level. There are many

communities right now that are talking about expanding their role, the role that they play in attracting local industry to their local communities, and one of the things that they are looking at is this specific role. We will now have the ability through the Business Finance Authority to deal with that. The second piece of this legislation that deals with local communities. There are many communities out there that have community development block grant loans to local businesses that are outstanding. When they use up the full extent of that authority, they can no longer lend to local businesses. We are going to give the Business Finance Authority the ability to go into that local community, take those loans, and buy them off of the local authority, and then sell them out on the secondary market and give the cash to the local CDBG to be able to lend again to the businesses in the community. That applies to every community in the state that has had the opportunity to do this. The third piece, presently if you go to the SBA, they will guarantee a loan up to \$750,000 which sounds like a lot of money. But if you are a small manufacturer that employs 50 or 60 people, that is not enough money to be able to meet your credit needs. Because of the lack of resources that exist within the banking community in the state or the unwillingness for them to loan without an SBA guarantee. We are going to go in and we are guaranteeing loans between \$750,000 and \$1,500,000 to be able to enable businesses that are larger than what the SBA can handle to be able to obtain their financing. The important piece of this is that when I talk about the state guaranteeing these loans, we are going to require by this legislation that the state of New Hampshire or the Business Finance Authority also reserve against any losses that might take place. That is the critical component of it. The risk to the state of New Hampshire is going to be minimal under this program because of the way that we are going to structure it. The biggest flaw in the existing IDA is that if you are a big business, the IDA works for you, but if you are a business that needs a couple hundred thousand dollars, they can't lend you the money because legal requirements of what they have to go through to do the bond offering to float that million dollars is so expensive that it cost somewhere in the range of in excess of \$40-\$50,000 to secure a loan through the IDA at the present time. What we are going to do is bundle loans in this new Business Finance Authority. We are going to take 15 small loans of \$200,000 apiece and put them into a package and then go out and sell them. This will allow them to make loans to small businesses in a manner in which will help some of those businesses that in fact are at the present time suffering because of lack of access to capital. The last piece on this and I serve on a bank board and I said that on the floor before. One of the things that is happening right now because of the economic problems that our

state's economy is facing is the reluctance for banks to make loans that have any risk. That basically, I think, is a statement of fact that they are all looking for SBA guarantees or some sort of credit enhancement in order to be able to secure a bank loan. I want to tell you about a company over in Rochester named Cabletron, that we have all heard up in front of this body, and I am very proud of the fact that Cabletron is in Rochester. They are going to open up a facility in Merrimack, that's south to help someone else's district, Senator Roberge. The people that work at Cabletron are from all over the state and they are from out of state because they have grown so fast that they have had to go into Massachussetts, northern Massachussetts to pull the technical people in that they need. One of the things that the bankers in my area, when they get together and they talk about things, is the fact that they all denied Cabletron a loan. They went from bank to bank looking for a banking institution that would take a risk on this company who had an idea, who was starting to grow, but their financial statements didn't warrant taking that risk as far as the banks were concerned. So when we all talk about jobs, when we talk about going out and creating economic opportunities for our citizens, we need to create the opportunity to those citizens that want to take some risk, that want to put it all on the line, start a small business and then employ people. So I am not saying that this piece of legislation is going to lead to the next Cabletron, but we need to provide the opportunity for entrepreneurs that want to go out and borrow money to be able to access that money. The final piece of what I will speak on in terms of the BFA piece, is that we are going to go to local banks after this passes, and we are going to say, you have some loans that you are unwilling to take the risk on at the present time, if you are going to lend \$100,000 to a company who you perceive as a little bit risky then what you want to do, we are going to take 10 percent of the value of that loan and deposit it in your bank as an incentive for you to make that loan. Clearly, one of the problems that banks have at the present time is that when they make a loan, they have to reserve against the potential for that loan to be bad. So this is another credit enhancement that we are putting in place. We are saying to the banks in the community that when the next Cabletron walks through the door, before you say to yourself, it is a little bit risky and we don't want to do it, we are willing to go in and share a little of the risk with you. So that, in essence, is the Business Finance Authority pieces. We will basically be providing about \$90,000,000 of new resources through the passage of this piece of legislation. Let me talk a little bit about the risk to the state of New Hampshire. This has been structured in a way in which the risk to the state of New Hampshire is minimum. Presently the Industrial Development Au-

thority has sufficient revenues to go out and borrow the money necessary to get this program off of the ground. We are talking about going out and borrowing \$25,000,000 to do all of these programs. The IDA, as a result of previous financing that they have done has a revenue stream, in fact we went in last year as a way of balancing the last budget that went through here and took \$5,000,000 out of the IDA that they have accumulated to help balance the state budget. But they have at the present time, a revenue stream that will fully pay for the cost of this \$25,000,000 that they are going to borrow. So for those of you who are concerned about the state spending a nickel, we don't have to spend a nickel to do this. This is a very innovative program, it is the result of a study committee that this Senate took a position on last year. The fact that we hired a consulting firm who did an excellent job of putting together a package that is affordable, that is within the existing resources that we have as a state that participates with the private sector, this is bank financing that we are going in and participating in. It is helping local communities who have seen fit to get involved in economic development activities. Everything that you want to be able to take back to your local communities and say that you are doing something about economic development is in this piece. I think that you should be proud that you have the opportunity to walk out of here with this piece of legislation today and go back to the Nashua group that is working with Economic Development, go back to the people of Wakefield who have an economic development committee, Roger, go back to Manchester. All of the various groups that have contacted me that are familiar with what is going on in this piece of legislation are enthusiastic, they are excited, they want us to do this. If there is any piece of legislation that is before us today that is important, this is the one, this one has a real impact. There are a couple of other pieces that I would be remiss if I didn't mention. We extended the date of the Industrial Development study committee, because this is just part of the work that needs to be done with the Industrial Development Authority and they need some additional time. We expand the role of local Industrial Development Authorities to engage in real estate activities. The Dover Industrial Development Authority which is completing an industrial development park in Dover needs an additional authority in an additional borrowing capacity, so we have done that. That is another important piece that I didn't mention. Cabletron's located in an industrial park that the city of Rochester developed. There is a case of a role in which a local Industrial Development Authority played a role, attracted a business to our community, and a real success story and I won't mention them again. But I think, clearly, this is an important aspect of this, it is a partnership between the state of New Hampshire and the local commu-

nities. The piece about the New Hampshire Retirement System is in here and I know that Senator Nelson has had a problem about that, and it is the last time that I will mention her on the floor today. But again, I point to the recommendations of the Mount Auburn people who put together, I think, a great program. That is a resource that we ought to look to tap into to try and get our states economy going again. The last piece is a business incentive piece that deals with venture capital funding, that has a minimal cost to the state of New Hampshire, that has the potential to leverage a large amount of venture capital money for those start up companies that are looking to get off of the ground. In essence what it does is, it says to a company who has a business profits tax liability, if you have \$100,000 in profit in which you would owe \$8,000 of tax on, we will give you a credit on that \$8,000 if you invest the \$100,000 in a venture capital fund. That will strictly be used for New Hampshire businesses owned by New Hampshire people. So that is an important piece, and it's again, this capital formation package is what took a significant amount of the committees time and effort. I think that they have done a great job on it and I think it is something that all of us can be proud of.

SENATOR HEATH: I rise in opposition to this, almost the entire package. The example of Cabletron and I sometimes think this body is essentially focused on Cabletron to a great excess. It is not the only business in the state of New Hampshire that is successful, and why it is a wonderful success story, it almost proves the contrary of this legislation. It went out and did it on its own. It didn't have the guarantee and full faith and credit of the state of New Hampshire behind its loan. What bothers me about this is that we have just gone through a cycle when the banks had so much money that they were making loans that were high risk. The greed got excessive, and the safe guards became minimal, and the banks got into trouble, and we and our children and our childrens children are going to be paying for. What this is going to do besides ruin our bond rating, is give the banks an excuse to go on another frenzy because the risk that they won't take now because they have learned their lesson, we are saying, we'll take them, take a little more risk. You have the full faith and credit of the state of New Hampshire behind you. I just can't see why we abandoned the individual responsibility and the thing that built the entrepreneurial system that we have today by letting government run out and back up small business loans in excess of what the federal government, and the federal government has been fairly fast and loose with these things, in excess of what they will do. The risk that is involved in risking your own money always makes more caution and makes more prudence, and it makes people make more

careful decisions than when it is backed up. We have already seen bankruptcy laws which were intended to give people another start in life as a business tactic now. People say, gee you know it's just like a loophole in their income tax for a lot of people now. Some of the bankruptcies, perhaps most of the bankruptcies are legitimate. People are in trouble in New Hampshire, we all know that, but some of them are just business tactics. They convert property in various directions and then they declare bankruptcy and then they let somebody else hold the bag. I think we ought to get out of private enterprise and not get in it. If anybody knows the rate of failure of new small businesses starting up, you know that you are risking an economic crisis down the line in voting for this. It is feel good stuff. I am sure that people who are in business who are trying to find money to operate their businesses and can't find that money, look at this as some kind of relief. I am sure that they won't be happy that I am not supporting it. But I think that we are saying, take more risk, risk the credit of all of the people in the state of New Hampshire, risk the credit of the state and go out and have a good time, and if you win and your business takes off, fine. If you don't, well fine, we are there to pick you up. I don't think that is a role of government. I think that by the time that this thing gets rolling, the economic cycle will have turned as it invariably turns up and turns down, and it won't have anything to do with this. We are not an island and there are not fences on our borders where money stops. We are part of a nation and the nation is going through an economic cycle. We had a terrible high and we are going to have a terrible low. We've had that and we are going to start coming out of it. This won't pull us out of it. It won't get going until we are already out of it. It will put a great risk on our state credit rating and I would urge you to not do the politic thing that will give you a headline tomorrow and a headache the next day, but vote this down and to show some fiscal prudence here. Because I believe that the best thing that we can do for New Hampshire economically, is to show fiscal prudence and so that people will come into the state, and start businesses, and raise their family here knowing that there is a government that is in charge and can control its spending and can set fiscal prudence in its own house, which it hasn't yet, before it tries to help somebody else take a higher risk than they ordinarily would. Thank you.

SENATOR PODLES: Senator Dupont, the reorganizing of this IDA with the BFA and the SBA, I noticed that most of the management of authority will be vested in the board of only 10 directors. The Governor and Council will also be involved, but I want to know what role does the legislature play here?



SENATOR DUPONT: Senator Podles, the IDA as it's presently structured is inpowered by a board of directors that are appointed by the Governor. That is not a change. Presently the IDA which has been in existence since 1952, I believe. I would be remiss if I didn't introduce Clark Chandler who is the director of the IDA who I have asked onto the floor. I believe it was 1952 or right in that area which is when the IDA was formed. It was formed for the purposes of assisting the economic growth of the state of New Hampshire and in fact they went out and purchased buildings to house companies, and in fact, they still own a building in Hooksett that General Electric, I believe, leases from the IDA. So in terms of the management of this entity, Senator Podles, this is not anything different than what has existed in the past. It is an attempt to try to move the IDA in a direction that will most closely reflect the actual economic activity that exists in the state of New Hampshire. We are not going to go back to the days when we had a manufacturing facility that decided to locate in New Hampshire with 2,000 new jobs. The growth in the state of New Hampshire is going to come in from small companies that are started here or that come here to grow. So the IDA needs to reflect the change in our economy and restructuring this agency so that it can provide assistance to small businesses is a key role. The legislature is adopting policy today, we are adopting policy today that will allow that change to take place.

SENATOR PODLES: But the fact that the full faith and credit of the state has to be pledged in this bonding, it just bothers me that with just 10 directors, they will have all of this authority.

SENATOR DUPONT: Senator Podles, as you know, with any other bond that is sold by the state of New Hampshire, the state treasurer has to be involved in it. It will require a Governor and Council if it has good faith and the credit of the state of New Hampshire behind it. So that is the way with any contract that the state of New Hampshire enters into. Presently the state of New Hampshire, through the IDA issues bonds, some of the bonds that will be issued will not have the good faith and credit of the state of New Hampshire, it will have the credit and the faith of the state of New Hampshire behind it, but the loans will have in front of it, a bank that stands to take the failure of the business and the loss before the state of New Hampshire. This program, while it may seem that it poses a risk, the risk is acceptable to the state treasurer. And she doesn't deem it to be of any significance. It is a way of taking a revenue stream that presently exists and doing some things that will enhance the economic activity in our state and with that will enhance the economic activity of our local communities, and I think that is the important part of it.

SENATOR COLANTUONO: Senator Bass, this was brought up a little while earlier, but since this is the piece that the study committee is in, I wanted to ask you about the study committee to study the desirability and the feasibility of enabling municipalities to grant abatements of property taxes. Now I am given to understand that this is something that this legislature fought long and hard a long time ago to get rid of and now we are resurrecting it. Even though it is not a bill, it is just a study, my question is, if it is such a lousy idea that we finally got rid of it, why are we even wasting our time to study it?

SENATOR BASS: Senator Colantuono, the legislature did not labor for many years to get rid of the studies, the concept that you are saying, but rather the problem that existed in the 17th, rather the 18th or 19th centuries before we had strict limitations and controls upon home rule. Whereby industries would place themselves in a position, essentially, to take over local government and force those governments to give them proprietary tax treatment and hold over those governments the threat of either leaving or in many instances, these major entities controlled the local government anyway, and they were able to force the local governing body to do whatever they wanted. In the 19th century, due to the courageous efforts of people who preceded us in this body and in the legislature, this sort of thing was stopped. Now we are looking at an effort to re-implement this kind of thing in the name of economic development. It is my opinion, that this sort of a process, is certainly supportable by individuals who live in towns where there is no substantial industry, but where the people live and commute and work in that given community, but the community in which the industry is located inevitably, and history has shown, is the loser; however, in an effort to be flexible and to allow for the thorough study of this subject, which is a very serious subject, I think it is legitimate to have a study committee with a good membership look at it in more detail, so I support this version of this particular bill.

SENATOR NELSON: Senator Dupont, on page 38, I just want an understanding because I am addressing specifically the words in brackets that were left out and those that were added. I am sure that you had a reason and I just want to know what was the reason? What was the reason on seven, who may serve as trustees? You have added whether or within outside the state may serve as trustees and you took out any national bank or any trust company, could you maybe just mention why . . . and the commonwealth of Massachusetts?

SENATOR DUPONT: Senator, I probably will need a second just to get that clarified. There was a reason for it, and going over the rest of the bill I am not sure that I can answer that without looking it over.

SENATOR NELSON: Well, I could go to my second question?

SENATOR DUPONT: Sure go ahead.

SENATOR NELSON: Alright, page 39. I just wanted to understand on page 39 number 15 here, this study committee established for the Industrial Development Authority. Why are you extending a study when you seemed to already know what you are doing and you are doing everything?

SENATOR DUPONT: Senator, there were two components of this study. There were some short-term things that we could do immediately, put some capital into our economy, and I want to make it clear, I know that there has been a reference to the fact that there has been a great deal of exposure to the state of New Hampshire under this program. I can assure you that there is minimum exposure. That our treasurer, who I think we all hold in high esteem has referenced that minimum exposure and is comfortable with the exposure that exists under this document. The second piece is this program, if passed by this legislature, will be up and running by the middle of 1992, it is a priority for the IDA. It will help our economy, it will give some of us who get calls daily about companies that can't find bank assistance another place to send those individuals to look for help.

SENATOR NELSON: Thank you. I see that Dover has the piece that was out of the bill that is placed in here and that there is some added language. What does it mean, implementing other authorized economic development projects, and what is this in relation to the state? What does this mean and what does it do?

SENATOR DUPONT: Senator Nelson, what it does, I believe, is allow them to do other activities that they are presently not in power to do by the statute that gives them the authority to do some of the things that are related to economic development. You have to remember that local communities and Dover is one of them, because of the credit crunch that exist in the state, are actually talking about setting up their own loan funds as a way of helping businesses that want to start. Dover has done that. If you are a company that wants to locate in Dover, they will provide some financing assistance to you. They have a committee of local bankers that sit down and look at loans. In Manchester, the Board of Alderman the other evening had a discussion because the Redevelopment Authority in Manchester want to do this. Communities have recognized the problem that

exists in the banking industry in our state, the lack of capital, and are using public funds as a way of helping the small businesses.

SENATOR NELSON: Okay. On page 41 why is it necessary, why do you have approval of governing body or Industrial Development Authority? What was the purpose of that language?

SENATOR DUPONT: Senator Nelson, because we are allowing some things to take place at the local level that will require the governing body or the local community to also be involved in it, because remember, we may go to a local industrial development authority that is controlled by a local city council or a Board of Alderman that will be looking for us to assist in projects that exist at the local level.

SENATOR NELSON: On page 42, it has to do with the hearing process and its new language which is why I am making the inquiry? It talks about nonpublic session, is that just when one is dealing with real estate and mortgages that that is just part of it or are you just adding . . . I am just curious as to why?

SENATOR DUPONT: Senator, you would have to tell me the specific section that you are referring to.

SENATOR NELSON: Oh, I am sorry. It starts on page 41, number II and then the dark black and then it goes to the top of 42, III. I was just wondering why the hearings would be required to be non-public sessions and the reports may be kept confidential?

SENATOR DUPONT: Senator, if you are a business who has a business plan that contains trade secrets or it contains the development of a new project that you are required to submit to a local Industrial Development Authority as part of the approval for them to acquire property and put you in a building or whatever, it may be necessary for the local authority to see that information, but it may not be to the benefit of the company to have all of its competitors know that it is moving to New Hampshire or to have even its employees in another location that it is moving from know that that information is out there until such time that a decision has been made. This has been a problem that I think that we should all be sympathetic to because it is no different than when you go to a bank and you want to borrow money, you would not want the documents that relate to how your husband earns a living or how your wife earns a living made available to anybody other than the people that are making the decision about whether they are going to grant that loan. This is similar.

SENATOR NELSON: Can you get me the answer on the first part of this?

SENATOR DUPONT: Yes, I will.

SENATOR SHAHEEN: Senator Dupont, I just want to clarify for the members of the Senate, am I correct that the piece that involves Dover and its Industrial Development Authority does not have any money attached, that is just a language change in there in a chapter law that created them back in the early 70's?

SENATOR DUPONT: Yes, that is correct. There is no money for the city of Dover in this legislation other than the businesses in Dover that might want to borrow from this fund. I do have the answer to Senator Nelsons question if she would like to hear it. Senator Nelson, the change that is in there is part of the existing language that exists for the IDA where they were limited as to who they could choose to be a trustee of the bond holders in terms of bonds that they participate in. It specifically said a trust company or a national bank and also that it had to be New Hampshire or Massachusetts and this allows them to go out to a larger circle to get the best deal for the state of New Hampshire.

SENATOR NELSON: How long has it been in effect and why was it necessary to do it now?

SENATOR DUPONT: Senator, it has been in effect since 1952 and I don't know when the changes were made, but again I tell you, that what we have done is gone through the statute that deals with the IDA and tried to make the changes that modernized the statute and things that were looked upon as not necessarily being a problem, but shouldn't be in there anymore.

SENATOR NELSON: Thank you. Would you believe that I just wanted to learn more about it?

Committee amendment adopted.

Ordered to third reading.

Senator Heath in opposition to SB 450.

SENATOR HOUGH (Rule #44): Thank you, Mr. President, I rise under the provisions of rule #44 and I would like to address this body as follows; first of all, I would like to praise, commend and congratulate President Dupont for his strong leadership and his bipartisan committee on Economic Development, for the hard work that they have done with the bills that we have just enacted. I would tell you that this is the most important, yes, the most meaningful state initiative that I have witnessed in the 20 years that I have served in this body. I would say that that would also go back further to the years shortly after the second world war. What is exciting to me is the states' recognition of our most important and valuable asset, that asset that cannot be exported, that is our brainpower. To tap the

resources at the university and at Dartmouth college to work in concepts with the state of New Hampshire under the initiatives that this committee has brought forward will be significant into the next century and beyond. In conclusion, Mr. President, I would tell you this, I am at a point now where I would challenge the media, I have seen these folks in their print media sit here through the whole process. A second ago, there was the television, I see no radio media. The visual and the audio media will reduce this down to a sound bite. Hopefully, the print media will analyze, report and emphasize this very important, sophisticated and important achievement that this state Senate has brought forward today under the leadership of President Dupont and his committee. So often we look at the headlines. This is an in-depth analysis, it is an important package. I compliment the President, I compliment the members of his committee and I challenge to get the word out of the significance of what this Senate has adopted here this afternoon. Thank you, and I would like to have a round of applause for President Dupont and his committee.

**SB 451-FN**, an act to require public hearings on proposed agency rules which result in fee changes. Economic Development committee. Inexpedient to Legislate. Senator W. King for the committee.

**SENATOR W. KING:** SB 451 is found in the Senate package titled SB 339.

**SENATOR COLANTUONO:** Senator King, is this the bill that required the public hearing before fee changes could be enacted?

**SENATOR W. KING:** Yes.

**SENATOR COLANTUONO:** Is that part in 339?

**SENATOR W. KING:** I don't believe that the hearing part is in 339. I thought that you went through that with Senator Dupont already?

**SENATOR COLANTUONO:** No, that was the issue of sending notices.

**SENATOR W. KING:** Well that is the only issue that is in 339.

### **SUBSTITUTE MOTION**

**SENATOR COLANTUONO:** I believe that this bill came out of committee ought to pass. I would like to substitute a motion of ought to pass on the floor at this time.

Recess.

Out of recess.

SENATOR W. KING: I gave Senator Colantuono some wrong information. The fact of the issue of the public hearings is in the text of SB 339 as much as it came out of the committee.

Senator Colantuono has withdrawn his motion of ought to pass.

Committee report of Inexpedient to Legislate is adopted.

**SB 455-FN**, an act relative to the Pease development authority. Economic Development committee. Inexpedient to Legislate. Senator W. King for the committee.

SENATOR W. KING: The contents of SB 445 are found in SB 393.

Committee report of Inexpedient to Legislate is adopted.

**SB 461-FN**, an act relative to the New Hampshire port authority and creating a study committee to establish criteria for the merger of the Pease development authority and the port authority. Economic Development committee. Inexpedient to Legislate. Senator W. King for the committee.

SENATOR W. KING: The contents of this bill are found in SB 393 already passed by this body.

Committee report of Inexpedient to Legislate is adopted.

**SB 464-FN**, an act relative to intellectual property. Economic Development committee. Inexpedient to Legislate. Senator Bass for the committee.

SENATOR COLANTUONO: The subject of this bill has already been passed in other legislation.

Committee report of Inexpedient to Legislate is adopted.

**SB 351**, an act prohibiting the sale of certain products containing phosphorus. Environment committee. Ought to Pass with Amendment. Senator Russman for the committee.

**5136L**

### **Amendment to SB 351**

Amend the bill by replacing all after the enacting clause with the following:

1 New Subdivision; Certain Cleansing Products Prohibited. Amend RSA 485-A by inserting after section 54 the following new subdivision:

#### **Certain Cleansing Products Prohibited**

485-A:55 Definitions. In this subdivision:

I. "Commercial establishment" means any premises used for the

purpose of carrying on or exercising any trade, business, profession, vocation, or commercial or charitable activity, including but not limited to laundries, hospitals, and food or restaurant establishments.

II. "Commissioner" means the commissioner of the department of environmental services.

III. "Household cleansing product" means any product, including but not limited to, soaps and detergents used for domestic or commercial cleaning purposes, including, but not limited to, the cleansing of fabric, dishes, food utensils and household and commercial premises.

IV. "Person" means any proprietor of a commercial establishment, corporation, municipality, the state of New Hampshire or any department, agency or any political subdivision of the state, any partnership, unincorporated association or other legal entity.

V. "Phosphorus" means elemental phosphorus.

VI. "Trace quantity" means an incidental amount of phosphorus which is not part of the household cleansing product formulation, is present only as a consequence of manufacturing and does not exceed 0.5 percent of the content of the product by weight, expressed as elemental phosphorus.

485-A:56 Products Prohibited. No household cleansing products except those used in dishwashers shall be distributed, sold or exposed for sale in this state, which contain a phosphorus compound in concentrations in excess of a trace quantity.

485-A:57 Phosphorus Content Limited.

I. No institutional laundry detergents, dishwashing detergents or detergents used for cleaning in places of food processing or dairy equipment shall contain a phosphorus compound in concentrations in excess of 8.7 percent by weight.

II. No cleansing product used primarily in industrial manufacturing, production and assembling processes shall contain a phosphorus compound in concentrations in excess of 8.7 percent by weight.

III. No household dishwashing detergent shall contain a phosphorus compound in concentrations in excess of 8.7 percent by weight.

IV. No cleansing product used primarily in a commercial establishment shall contain a phosphorus compound in concentrations in excess of 8.7 percent by weight.

485-A:58 Penalty. Any person who violates the provisions of this subdivision shall be subject to a civil penalty not to exceed \$2,500. Each continuing day in violation shall be subject to a penalty of up to \$100.

2 Effective Date. This act shall take effect January 1, 1993.



### AMENDED ANALYSIS

This bill prohibits the sale of household cleansing products which contain a phosphorus compound in concentrations in excess of a specified quantity.

This bill also limits the concentration of phosphorus allowed in cleansing products used primarily for industrial use, institutional use, commercial use or residential dishwashers.

SENATOR RUSSMAN: This is a clean bill although it is a little watered down, but the only problem is that it may exempt everything. That is the only problem. Hopefully, it should be of little controversy at this point. It will add something to cleaning the lakes and streams and rivers although it is going to be minor, certainly after the exemptions that we have in it, but most of the people involved with the industry seem to be happy with it. The committee voted ought to pass with the various amendment. I have the latest amendment which is being passed out to make the hotel people happy.

Committee amendment adopted.

Senator Oleson opposed to the committee amendment on SB 351.

SENATOR RUSSMAN: Hotels were not specifically named, and the hospitality industry asked if they could be, specifically in the legislation under exemptions and that is the only thing in the amendment that you have before you.

Senator Russman offered a floor amendment.

5329L

#### Floor Amendment to SB 351

Amend the bill by replacing all after the enacting clause with the following:

1 New Subdivision; Certain Cleansing Products Prohibited. Amend RSA 485-A by inserting after section 54 the following new subdivision:

#### Certain Cleansing Products Prohibited

485-A:55 Definitions. In this subdivision:

I. "Commercial establishment" means any premises used for the purpose of carrying on or exercising any trade, business, profession, vocation, or commercial or charitable activity, including but not limited to laundries, hospitals, and food or restaurant establishments.

II. "Commissioner" means the commissioner of the department of environmental services.

III. "Household cleansing product" means any product, including but not limited to, soaps and detergents used for domestic or commercial cleaning purposes, including, but not limited to, the cleansing of fabric, dishes, food utensils and household and commercial premises.

IV. "Person" means any proprietor of a commercial establishment, corporation, municipality, the state of New Hampshire or any department, agency or any political subdivision of the state, any partnership, unincorporated association or other legal entity.

V. "Phosphorus" means elemental phosphorus.

VI. "Trace quantity" means an incidental amount of phosphorus which is not part of the household cleansing product formulation, is present only as a consequence of manufacturing and does not exceed 0.5 percent of the content of the product by weight, expressed as elemental phosphorus.

485-A:56 Products Prohibited. No household cleansing products except those used in dishwashers shall be distributed, sold or exposed for sale in this state, which contain a phosphorus compound in concentrations in excess of a trace quantity.

485-A:57 Phosphorus Content Limited. No household dishwashing detergent shall contain a phosphorus compound in concentrations in excess of 8.7 percent by weight.

485-A:58 Exemptions. The following cleansing agents shall be exempt from the provisions of this subdivision:

I. A detergent used in dairy, beverage or food processing cleaning equipment.

II. A detergent used in hotels or hospitals, including veterinary hospitals or clinics, or health care facilities.

III. A phosphoric acid product, including a sanitizer, brightner, acid cleaner, or metal conditioner.

IV. A detergent used by industry for metal cleaning or conditioning.

V. A detergent manufactured, stored or distributed for use or sale outside of the state.

VI. A detergent used in any laboratory, including a biological laboratory, research facility, chemical laboratory or engineering laboratory.

VII. A detergent used in commercial laundries which provides laundry services for hospitals, health care facilities or veterinary hospitals.

VIII. Any substance, which if banned, would cause a significant hardship or be unreasonable because of the lack of an adequate substitute.

485-A:59 Penalty. Any person who violates the provisions of this subdivision shall be subject to a civil penalty not to exceed \$2,500. Each continuing day in violation shall be subject to a penalty of up to \$100.

2 Committee on Phosphate Limits Established. There is hereby established a committee to study the effect that phosphates have on the waters of this state and recommend whether or not phosphate limits should be implemented. The committee shall consist of the following members:

I. One senator from the environment committee, appointed by the president of the senate.

II. Two representatives, one from the resources, recreation and development committee and one from the environment and agriculture committee, appointed by the speaker of the house.

III. One limnologist from the department of environmental services, appointed by the commissioner.

IV. One person from the business and industry association, appointed by that association.

V. One person from the New Hampshire Lakes Foundation, appointed by that association.

3 Meetings; Compensation. The members shall choose a chairperson from among the committee. The members of the committee shall serve without compensation, except that the legislative members shall receive mileage at the legislative rate when attending to the duties of the committee. The senate member shall call the first meeting prior to July 15, 1992.

4 Report. The committee shall report on the following:

I. The effect of the current phosphate limitations.

II. Recommendations as to whether or not it would be beneficial to extend limitations on phosphate products used for commercial, industrial or institutional purposes.

III. Whether or not phosphate bans are necessary to protect water quality.

IV. The report shall be submitted to the governor, the senate president, and the speaker of the house, on or before November 1, 1992.

5 Effective Date.

I. Sections 1-3 of this act shall take effect January 1, 1993.

II. Section 4 of this act shall take effect upon its passage.

### AMENDED ANALYSIS

This bill prohibits the sale of household cleansing products which contain a phosphorus compound in concentrations in excess of a specified quantity.

This bill limits the concentration of phosphorus allowed in residential dishwasher detergents.

This bill also establishes a study committee to determine whether further limits are needed to protect the state's water quality. The committee shall submit its report to the governor, the senate president and the speaker of the house by November 1, 1992.

SENATOR HEATH: Just hotels, not car washes?

SENATOR RUSSMAN: I don't believe car washes was specifically referred to in the bill.

SENATOR HEATH: Are they exempt though?

SENATOR RUSSMAN: I think that all of those industrial and commercial type enterprise are indeed exempt.

SENATOR HEATH: It is exempt, but it is not referred to in the bill?

SENATOR RUSSMAN: Well there are general industry headings that are, so that would make it simpler to generalize.

SENATOR HEATH: Oh, okay, I understand now.

SENATOR RUSSMAN: I knew that you would, Senator Heath.

SENATOR HEATH: I thought you knew I would.

SENATOR FRASER: Senator Russman, I am pretty sure that somewhere in here that schools were exempted?

SENATOR RUSSMAN: I believe that they are. Any type of institutional, let say that this is the Maryland Bill and as far as I know the exemptions would cover that.

SENATOR HEATH: Why would you exempt industrial uses and not exempt sort of a home use which would essentially help them in safety uses. Which you are talking about an ingredient which essentially enhances cleaning, but has a detrimental affect on the environment. Why would you exempt some of the less important uses then the ones in your home where you are trying to get laundry as clean as possible for the health of your family?

SENATOR RUSSMAN: The idea is that there is more adequate alternatives in the home industry than there is in some of the industrial applications. Matter of fact, in the dishwashing end of it we were told by the people that are in the know, that some of the . . . because there is not, lets say hand action, washing the dishes, the machine does it itself, they need that phosphorus to lift caked on dirt and that kind of thing.

SENATOR HEATH: Yet nobody has machines in their homes to wash dishes?

SENATOR RUSSMAN: Maybe up in your town they don't, but in most of the other parts of the state, many people have dishwashers.

SENATOR HEATH: So are you exempting all dishwashing detergents?

SENATOR RUSSMAN: To 8.7 percent which is a standard that the industry said that they could live with.

SENATOR HEATH: What are you then banning?

SENATOR RUSSMAN: It would be in other household cleansers.

SENATOR HEATH: Like . . .

SENATOR RUSSMAN: Like other soap detergents, hand washing dish detergents that you would perhaps use in a sink or that kind of thing, because the industry itself said that it was not necessary to have it in there.

SENATOR COLANTUONO: I have two questions. First of all, you mentioned the Maryland bill. How many other states have these bans? The second question is, what does the federal government say about this? In other words do they have a law on this or are they about to pass a law that will sweep away our law under this supremacy clause?

SENATOR RUSSMAN: I think that you have three questions in one. Dealing with the first one, the exact number I want to say is, I believe, it is like 25 or 30 states that have some type of legislation in effect bearing to various degrees. The most important ones are all of the states around the Chesapeake Bay and all the states around the Great Lakes have enacted similar legislation. The other part of your question, relative to the federal government. There is not at this time a federal legislation governing this area and it has been left to the states. Whether or not the federal government will enact something, I do not know.

SENATOR NELSON: Senator Russman, after looking this over carefully, reading it word by word, I do not see the word higher education, schools. I see exemptions for hospitals, hotels and clinics. I don't see any exemptions for schools or higher education institutions and I wondered if it should be in there?

SENATOR RUSSMAN: To be honest with you, there was no testimony relative to a need for them to be in there, number one, but more than that, if you look over on page three, it talks about any substance which a ban would cause a significant hardship or unreasonable or be unreasonable because of lack of adequate substitute. I think that they would probably qualify under that. Now if that needs

to be added in the House, I would have no objections to that certainly, to that addition being made. Nobody that has testified to us has talked about that issue.

SENATOR NELSON: Then why did you exempt hospitals and hotels, what was the reason?

SENATOR RUSSMAN: Because this was lifted literally from the Maryland bill, the language. That has already been tried and tested in Maryland for a few years now. The industry asked to use that as a model, for whatever reason and I am not sure why they chose Maryland, but that was the bill that they referred to.

SENATOR NELSON: No, why are the hospitals exempt? I look at this and I see hotels and hospitals. I think lodge groups, germs, etc. I think schools, institutions and all the people living there, so I am trying to figure out why Maryland put hospitals and hotels and clinics in it and health care facilities?

SENATOR RUSSMAN: They actually didn't have hotels listed specifically, it was found to be after that they should have been, that is what Mr. Pellitier told me this morning, the lobbyist for that particular organization. I think in the food processing that first one, number one, like for schools and whatnot, that was certainly applied to them as the same way, anywhere there is food processing or beverage, cleaning type of equipment, that would be dishwashers in any commercial or institutional setting that would be covered under this.

SENATOR NELSON: What if they are cleaning bathrooms or floors and things like that and desks?

SENATOR RUSSMAN: The industry said that it wasn't a need for that type of cleansing because that type of thing is done by hand. The example that they gave was for like Anheuser Busch where there are long piping like for dairy farms where they have long pipes so that they can't get into there and clean by hand. That was where they needed it where it had to be done totally by machine and not with human touch, if you will. That was the distinction that had to be made there in terms of what the uses were going to be.

SENATOR HEATH: Senator Russman, would you agree that this has some impact on business at least more than the motorcycle noise level law?

SENATOR RUSSMAN: No, I would not. I would not agree. I don't think it is going to impact business of any nature. I really don't.

SENATOR HEATH: Don't you think this bill should have been referred to the Economic Development committee?

SENATOR RUSSMAN: I'm not so sure at this point what should have been referred to Economic Development, but I don't think that would have an effect on Economic Development, Senator, so I don't see the need to have it referred.

SENATOR HEATH: Do you think that this will send a message out to businesses about New Hampshire's idea of control in terms of free enterprise?

SENATOR RUSSMAN: I think if anything, it would send a positive message to show how we can work with business in order to exempt the ones that are necessary. Yes, absolutely.

SENATOR CURRIER: Some of us have taken a little lightly, Senator Russman's concern about the phosphate levels and so forth, and I don't want to diminish his sincerity in his efforts in terms of this bill about the bubble blowing and so forth and so on. We have just concluded a couple hours of debate relative to economic development and we were talking about one of the programs in there, was to try to help industry deregulate some of the things, and to me, this seems to be a little bit of conflict with this piece of legislation. Other states before they had enacted legislation of this nature spent years researching the potential effects on water quality as a result of this. The state of New Hampshire has done nothing. I would like to point out one other fact, the Department of Environmental Services in their current 305:B, which is a report that they have to submit to the Environmental Protection Agency says clearly, in fact very clearly, "that the greatest threat to the continued health of New Hampshire lakes along with acid rain, is the over use of an over development around the lakes." We would be better served by sponsoring legislation dealing with that than this particular phosphate bill.

SENATOR W. KING: The fact is that we as a state, and this Senate, and the legislature are moving on all of those fronts. We have the shoreline protection act, we have the rivers management and protection plan. All of those things are intended to address water quality and quantity issues to protect the quality of the water, which has a visible impact, which has an impact on the cleanliness of the water and which furthermore, has a very significant economic impact in the state of New Hampshire in terms of attracting tourists in the state. I rise in favor of Senator Russman's amendment for several reasons, Senator Russman has worked very hard to come to a compromise that is reasonable. Almost everyone who is involved in the discussions felt that this was indeed a reasonable compromise. Why? Because it did several things. Number one, it recognized that phosphates were a problem in terms of the water quality in the state of New Hampshire; however, it did not penalize businesses in those

areas where there was not a reasonable alternative available. In other words, New Hampshire wasn't trying to drive research and technology with the small marketplace that we have here. What we were instead doing is looking at what was currently available and whether there was reasonable alternatives to higher phosphate level problems so that we could continue to strive to continue to protect the quality of our rivers, our streams. And our lakes in the state of New Hampshire. Senator Russman has worked long and hard on this issue and he is to be commended not only for the work that he has done on the issue, but for taking the slings and the arrows that went along with it.

SENATOR OLESON: Maybe I was one of the people who was opposed to the bill as first written in our committee and I do want to recommend the patience of our Chairman, Wayne King, because I think that we spent more time on this than we are going to spend the next 10 years on economic development for the state of New Hampshire. I also commend Mr. Russman for doing everything he could and bending over backwards, and he must have a lame back at the present time for trying to meet the objections which I might have brought up. Nevertheless, Mr. President, seriously, I always have been against any kind of floor amendment. I do not have the time to read it, I do not have the time to analyze it, I do not have the time to go to some of my constituents and see if they might have some objections to it and what they might be. So as a rule, 90 percent of the time, I might go against a floor amendment. I would like to voice my objection to the bill as amended. I would like to go on record and at the same time I do not mind having it sent over to the House and let them spend there time on trying to wash it out, preferably with soap that does not contain phosphate and they will end up with a bill that might be a little bit dirtier than it should be. Thank you very much.

Senator Blaisdell moved the question.

Adopted.

Floor amendment adopted.

Question is on ordering to third reading.

Division vote requested.

Yeas 14

Nays 4

Ordered to third reading.

SENATOR DISNARD: It is with great pleasure that I introduce the honorable Zachary Douglas King. Now will the real Senator please come in . . . Alice King.



SENATOR DELAHUNTY: Although it is always a pleasure to have Senator King amongst us, I think it's a real pleasure to have his lovely wife Alice, and his newborn son, Zachary here to visit with us today.

### HOUSE MESSAGE

The House of Representatives concurs with the Senate in its amendments to the following entitled Bill sent down from the Senate:

**HB 1328-FN**, relative to the fiscal responsibilities of the county commissioners and the county convention for capital expenditures in Rockingham county.

### COMMITTEE REPORTS

**SB 306-FN-A**, an act allowing bonus payments in recognition of service during the Persian Gulf War and making an appropriation therefor. Finance committee. Ought to Pass. Senator Blaisdell for the committee.

SENATOR BLAISDELL: Senate Finance, Mr. President, and members of the Senate, ask you to vote ought to pass on SB 306.

Adopted.

Ordered to third reading.

**SB 314-FN-A-LOCAL**, an act making a supplemental appropriation for the board of tax and land appeals and increasing filing fees for appeals to the board. Finance committee. Ought to Pass with Amendment. Senator Hough for the committee.

5294L

#### Amendment to SB 314-FN-A-LOCAL

Amend the bill by replacing section 2 with the following:

2 Payment of Filing Fee to Board of Tax and Land Appeals Increased. Amend RSA 76:16-a, I to read as follows:

I. After the selectmen neglect or refuse to so abate, in accordance with RSA 76:16, any person aggrieved, having complied with the requirements of RSA 74, upon payment of a [\$40] \$75 filing fee, may, within 8 months after notice of such tax, and not afterwards, **unless the municipality shall have an additional 2 months to respond to the appeal as provided in RSA 76:16, II**, apply in writing to the board of tax and land appeals which, after inquiry and investigation, shall hold a hearing if requested as provided in this section and shall make such order thereon as justice requires; and such order shall be enforceable as provided hereafter. Property owners who have appealed a tax assessment to the board of tax and land appeals

and who receive a tax bill for a subsequent year prior to the time the board of tax and land appeals has acted on the original appeal shall be automatically considered as having appealed the subsequent bill and no further filing fee shall be required. "Notice of such tax" means the date the board of tax and land appeals determines to be the last date of mailing of the final tax bill by the taxing district. The person aggrieved shall state in its appeal to the board either the date of the municipality's decision on the RSA 76:16 application, or that 6 months has passed since the notice of the tax and that the municipality failed to issue a decision in accordance with RSA 76:16.

Amend the bill by replacing section 5 with the following:

5 Supplemental Appropriations; Board of Tax and Land Appeals. The sums of \$38,991 in general fund moneys and \$25,994 in highway fund moneys for the fiscal year ending June 30, 1992, and the sums of \$63,130 in general fund moneys and \$42,088 in highway fund moneys for the fiscal year ending June 30, 1993, are hereby appropriated to the board of tax and land appeals for the purpose of hiring and compensating one paralegal II, salary grade 18, and 2 executive secretaries, salary grade 10. These appropriations are in addition to any other funds appropriated to the board of tax and land appeals. The governor is authorized to draw his warrant for said sums out of the appropriate funds.

### AMENDED ANALYSIS

This bill makes supplemental appropriations for fiscal years 1992 and 1993 to the board of tax and land appeals in order for the board to hire one paralegal II and 2 executive secretaries. The bill increases the filing fees for taking appeals before the board from \$40 to \$75. The bill also clarifies the process for taking appeals before the board in terms of the original time within which a municipality must respond to the initial appeal by the aggrieved person.

SENATOR HOUGH: The committee agrees with the policy committee in the passage of this bill. The amendment simply puts the appropriation which will be offset by the increase in fees in the same mode as the balance of their budget being a proportionate charge against the general fund and the highway fund in relation to the source of appeals be it tax appeals or right of way decisions. The amendment also corrects a technical error that appeared in a bill dealing with the board of tax appeals a year ago.

Committee amendment adopted.

Ordered to third reading.

SB 319, an act separating the AFDC standard of need from the AFDC payment standard, increasing the AFDC standard of need

and increasing medicaid eligibility for pregnant women and children. Finance committee. Ought to Pass with Amendment. Senator Hough for the committee.

**5311L**

**Amendment to SB 319**

Amend RSA 167:3-d as inserted by section 5 of the bill by replacing it with the following:

5 New Section; Medical Assistance Coverage for Pregnant Women, Infants and Children Added. Amend RSA 167 by inserting after section 3-c the following new section:

167:3-d Medical Assistance for Pregnant Women, Infants and Children. The director of the division of human services shall adopt rules under RSA 541-A establishing categorically needy coverage groups under RSA 167:6, VII to provide medical assistance coverage, effective July 1, 1992, to pregnant women, infants and children up to 150 percent of the federal poverty level.

SENATOR HOUGH: The committee on Finance agrees with the policy committee in the passage of this bill. The committees amendment increases the eligibility from 133 percent of poverty to 150 percent versus the 185 as it came to us. That is the basis of the Finance committees amendment. It is a recognition that we must move forward in providing prenatal medical services to the working force and it moves forward to address those most vulnerable in this group. It is not all that we should be doing, but it is all that we can do with the resources that we have available at this time.

SENATOR MCLANE: I would like to thank the policy committee for having done such good work on this. I would also like to ask if I could pass out some booklets about a conference that is being held in recognition of this study of poor children. The Senate has been invited for free. There are going to be over 400 people there. It is going to be the best conference on children that has ever been held in New Hampshire and I would urge you all to attend.

Committee amendment adopted.

Ordered to third reading.

**SB 328-FN**, an act restoring funds to the University System. Finance committee. Inexpedient to Legislate. Senator W. King for the committee.

SENATOR W. KING: We are hopeful that the issues that are addressed in this bill will be able to be addressed in the supplemental budget. Therefore, we are recommending that this bill as it is be inexpedient to legislate.

Committee report of Inexpedient to Legislate is adopted.

**SB 334-FN-A**, an act authorizing the division of public health services to carry out a rabies surveillance to identify and gauge the threat to the public's health and making an appropriation therefor. Finance committee. Ought to Pass with Amendment. Senator Roberge for the committee.

**5296L**

**Amendment to SB 334-FN-A**

Amend the title of the bill by replacing it with the following:

**AN ACT**

authorizing the division of public health services to carry out  
a rabies surveillance to identify and gauge the  
threat to the public's health.

Amend the bill by deleting section 5 and renumbering section 6 to read as 5.

**AMENDED ANALYSIS**

This bill authorizes the division of public health services, with the assistance of the department of agriculture and the fish and game department, to carry out an extended rabies surveillance effort to gauge the threat to the public's health. The bill also authorizes the division to establish one part-time laboratory scientist II position.

**SENATOR ROBERGE:** Mr. President and members of the Senate, SB 334 as amended keeps policy in the bill and removes the appropriation which will be coming forward in HB 1025.

Committee amendment adopted.

Ordered to third reading.

Recess.

Senator Dupont in the Chair.

**SB 335-FN**, an act authorizing the board of marital mediator certification to establish and collect certification fees, establish a budget and certify certain applicants and continually appropriating a fund. Finance committee. Ought to Pass with Amendment. Senator Blaisdell for the committee.

**5301L**

**Amendment to SB 335-FN**

Amend the title of the bill by replacing it with the following:

## AN ACT

authorizing the board of marital mediator certification to establish and collect certification fees, establish a budget and certify certain applicants.

Amend section 1 of the bill by replacing all after RSA 328-C:10 with the following:

328-C:11 Fees. The board shall establish fees for applications for certification and certification renewal under this chapter sufficient to produce estimated revenues to fund the direct operating expenses of the board. Fees collected under this chapter shall be deposited in the general fund.

328-C:12 Expenses. Members of the board shall be reimbursed for all actual travel, incidental, telephone and clerical expenses necessarily incurred in carrying out the provisions of this chapter.

Amend the bill by deleting section 6 and renumbering section 7 to read as 6.

## AMENDED ANALYSIS

This bill authorizes the board of marital mediator certification to establish fees for certification.

This bill also authorizes the board to adopt rules regarding the duration and content of training programs.

SENATOR BLAISDELL: Mr. President and members of the Senate. SB 335 came to us as a policy agreement from the Executive Departments. All that Senate Finance did with this particular piece of legislation was set up its board with a \$50 fee so they may have to come in with a 125 percent to cover the cost. Senate Finance moves adoption.

Committee amendment adopted.

Ordered to third reading.

**SB 349-FN-A**, an act making a supplemental appropriation to the joint promotional advertising program in the department of resources and economic development. Finance committee. Inexpedient to Legislate. Senator Hough for the committee.

SENATOR HOUGH: One of the bright spots last summer in an otherwise flat economy, was an aggressive promotion campaign, especially in the north country in the area of vacation travel. We saw a significant increase in the number of our Canadian neighbors coming into the lakes region. We are attempting to do the same thing this summer; however, we are going to do it by working continually with the hospitality association and DRED and we are going to re-

structure a further emphasis in fiscal year 93 in the operating budget. For that reason, we would report this inexpedient. The subject isn't dead, the bill should die because we are going to put the emphasis in the agency where it belongs.

Committee report of Inexpedient to Legislate is adopted.

**SB 376-FN-A**, an act relative to congregate services programs and making an appropriation therefor. Finance committee. Ought to Pass with Amendment. Senator Blaisdell for the committee.

**5295L**

### **Amendment to SB 376-FN-A**

Amend the title of the bill by replacing it with the following:

#### **AN ACT**

relative to congregate services programs.

Amend the bill by deleting section 4 and renumbering section 5 to read as 4.

### **AMENDED ANALYSIS**

This bill authorizes an increase in administrative costs for the division of elderly and adult services for the purposes of congregate housing programs.

**SENATOR BLAISDELL:** Mr. President and members of the Senate, this SB 376 is a policy bill that was structured by Senator Podles and she deserves the accolades for what is going to happen to this bill. The Senate Finance committee struck out the appropriations because it will be handled in HB 1025.

Committee amendment adopted.

Ordered to third reading.

**SB 378**, an act transferring duties under the uniform reciprocal enforcement of support act from county attorneys to the office of child support enforcement services. Finance committee. Ought to Pass. Senator Blaisdell for the committee.

**SENATOR BLAISDELL:** Mr. President and members of the Senate, this came out of the policy committee of the Judiciary committee, it was ought to pass and Senate Finance committee looked at it and we agree with their decision.

Adopted.

Ordered to third reading.

**SB 411-FN**, an act relative to special education catastrophic aid. Finance committee. Ought to Pass. Senator Hough for the committee.

**SENATOR HOUGH:** Again, the committee on Finance agrees with the policy committee on Education in the passage of SB 411-FN. This bill simply allows for catastrophic aid payments to be paid back to the local districts on the basis of estimates. This will get the resources back to the local schools in a more timely fashion so that they can properly budget for this activity.

Adopted.

Ordered to third reading.

**SB 414-FN**, an act authorizing a pilot program in one county for investigative services for attorneys providing counsel to indigent defendants. Finance committee. Ought to Pass. Senator Blaisdell for the committee.

**SENATOR BLAISDELL:** SB 414, Mr. President and members of the Senate, also is a policy bill that came out of Judiciary. It authorizes the pilot program. The money is in their budget, we have authorized that. We agree with the policy, but the money is in the budget, that was our determination.

Adopted.

Ordered to third reading.

**SB 436-FN-LOCAL**, an act relative to aid to the permanently and totally disabled. Finance committee. Ought to Pass with Amendment. Senator Hough for the committee.

**5312L**

### **Amendment to SB 436-FN-LOCAL**

Amend the title of the bill by replacing it with the following:

#### **AN ACT**

relative to aid to the permanently and totally disabled.

Amend the bill by replacing all after the enacting clause with the following:

1 Retention of Aid Until Final Determination is Made. Amend RSA 167:6, VI to read as follows:

VI.(a) For the purposes hereof, a person shall be eligible for aid to the permanently and totally disabled who is between the ages of 18 and 64 years of age inclusive; is a resident of the state; and is permanently and totally disabled. No person shall be eligible to receive such aid while receiving old age assistance, aid to the needy blind, or aid to families with dependent children.

**(b) However, regardless of a person's medicaid eligibility, a person shall retain any aid he is currently eligible to receive as aid to the permanently and totally disabled, through all administrative and judicial processes, until a final determination is made on such person's social security eligibility.**

2 Effective Date. This act shall take effect 60 days after its passage.

### AMENDED ANALYSIS

This bill allows persons to retain the aid they receive from aid to the permanently and totally disabled, regardless of their medicaid eligibility, through any administrative and judicial processes, until a final determination is made on their social security eligibility.

SENATOR HOUGH: The committee on Finance recommends ought to pass with amendment. I will tell you that after the disposition of the committees amendment, there will be a floor amendment. The floor amendment addresses the language in the bill as it was received in Finance, relative to the exemption of the blind as local option in a community. We did not intend to remove it, when we drafted our amendment it got removed. We are going to have a floor amendment putting the question of the property tax exemptions for the blind back exactly as it was when it came from the policy committee. I know that Senator King had a question, but it was in late moments. Perhaps we will discuss this in a moment. The Finance committee is not changing the policy committee on that subject. The significance of the committee amendment is that we have provided the appropriation to fund the financial grants for those individuals who have been denied financial support through social security, permanent and total disability and are appealing those decisions. That is the status of the bill as it was originally drafted. We are bringing back 100 percent non federal financial support for under the aid of permanently and totally disabled people during the appeal of a social security denial. That is the extent of which the Finance committee amendment applies. With eligibility for APTD also comes eligibility for medicaid, but we are not touching that piece. We are providing the financial support during the appeal process. That is what our amendment does.

SENATOR HOLLINGWORTH: I am happy to support the amendment coming out of Finance, but I am hoping that over the year that we are going to have a chance to look at this because what they have done is said that even though New Hampshire finds an individual



totally and permanently disabled, if they go through the process and they are denied the federal assistance, they will end up being denied the assistance from the state of New Hampshire. I think that we have to look at that, and in a year be able to evaluate whether in fact there are people who we believe that need the assistance even after they go through the process. The federal government cannot tell the state of New Hampshire to deny the funds that they determine people are eligible for under New Hampshire's eligibility. My amendment was that the state of New Hampshire, if they determine someone should be able to receive assistance, they should be able to continue to receive assistance no matter what the feds determined. Since we have a much higher standard, I would hope that we would look at this next session, and if we find that people are being closed out we will address that.

Committee amendment adopted.

SENATOR HOUGH: Who does move floor amendment 5330L, which I said previously, puts back the language 'relative to the exemption for the blind' as it was set in the policy committee and passed to Finance.

Senator Hough offered a floor amendment.

5330L

### Floor Amendment to SB 436-FN-LOCAL

Amend the title of the bill by replacing it with the following:

#### AN ACT

relative to aid to the permanently and totally disabled  
and the property tax exemption for the blind.

Amend the bill by replacing all after section 1 with the following:

2 Exemption for the Blind. Amend RSA 72:37 to read as follows:

72:37 Exemption for the Blind. Every inhabitant who is legally blind as determined by the blind services department of the vocational rehabilitation division of the education department shall be exempt each year on the assessed value, for property tax purposes, of his or her residential real estate to the value of \$15,000, **and a city or town may exempt up to \$35,000 to address significant increases in property values.** The term "residential real estate" as used in this section shall mean the same as defined in RSA 72:29. All applications made under this section shall be subject to the provisions of RSA 72:33 and RSA 72:34.

3 Effective Date. This act shall take effect 60 days after its passage.

**AMENDED ANALYSIS**

This bill allows persons to retain the aid they receive from aid to the permanently and totally disabled, regardless of their medicaid eligibility, through any administrative and judicial processes, until a final determination is made on their social security eligibility.

This bill also authorizes cities and towns to raise the tax exemption for legally blind persons to \$35,000 to address significant increases in property values.

Floor amendment adopted.

Recess.

Out of recess.

**LAIID ON THE TABLE**

Senator Disnard moved to have SB 436-FN-L relative to aid to the permanently and totally disabled, laid on the table.

Adopted.

SB 436-FN-L is laid on the table.

**SB 441-FN-A**, an act establishing a statewide enhanced 911 system and continually appropriating a special fund. Finance committee. Ought to Pass. Senator Blaisdell for the committee.

**SENATOR BLAISDELL:** Mr. President and members of the Senate, SB 441 came out of the Executive Departments as a policy decision. Senate Finance agrees with them, and we think it is an excellent piece of legislation. We move it ought to pass.

Adopted.

Ordered to third reading.

**SB 443-FN**, an act requiring the division for children and youth services to develop, implement and administer an automated case management system. Finance committee. Ought to Pass. Senator Blaisdell for the committee.

**SENATOR BLAISDELL:** Mr. President and members of the Senate, SB 443 is a policy bill that came out of Public Institutions, Health and Human Services committee and the money has been taken out of it because we will address the money in HB 1025.

Adopted.

Ordered to third reading.

**SB 473-FN-A**, an act relative to a fund for organ transplantation and transferring responsibility from vocational rehabilitation to the division of human services. Finance committee. Ought to Pass with Amendment. Senator Hough for the committee.

5310L

**Amendment to SB 473-FN-A**

Amend the bill by replacing section 2 with the following:

**2 Organ Transplant Funding; Appropriation.**

I. The organ transplantation program fund, established in RSA 161-H:4 in section 1 of this act, shall begin each new fiscal year with a balance of \$100,000. If total funding is not immediately available, the director of the division of human services in consultation with the commissioner of health and human services shall develop a plan to reach the \$100,000 goal over a specified period.

II. The sum of \$100,000 for the fiscal year ending June 30, 1993, is hereby appropriated to the division of human services, department of health and human services for the purpose of starting the funding of the organ transplantation program fund established in section 1 of this act. This appropriation is in addition to any other funds appropriated to the division of human services. The governor is authorized to draw his warrant for said sum out of any money in the treasury not otherwise appropriated.

Amend the bill by replacing section 4 with the following:

**4 Effective Date. This act shall take effect July 1, 1992.**

SENATOR HOUGH: Again, the committee on Finance amendment only deals with the monetary value. We agree with the policy committee, the organ transplant program belongs in the Human Service. The appropriation for the revolving fund was \$500,000. There was no meaning to the \$500,000. It is one of these situations where months go by and there is no activity and then a case or two cases will surface. We are going to start on July 1, with \$100,000 and if the Department of Health and Human Services finds between then and the next 12 months that they deplete it, we will have to address this, but this is the headline grabbing catastrophic kidney transplant type situations that appear every once in while and fortunately, not that often.

Committee amendment adopted.

Ordered to third reading.

**SB 469-FN**, an act relative to retirees' cost of living adjustments, service retirement allowances, and continuing education conferences. Insurance committee. Ought to Pass with Amendment. Senator Bass for the committee.

5304L

**Amendment to SB 469-FN**

Amend the title of the bill by replacing it with the following:

## AN ACT

relative to service retirement allowances and continuing education conferences for retirement system board of trustees.

Amend the bill by replacing all after the enacting clause with the following:

1 Requirement for Receiving Service Retirement Benefits; Group I Members. Amend RSA 100-A:5, I(a) to read as follows:

(a) Any group I member may retire on a service retirement allowance upon written application to the board of trustees setting forth at what time, not less than 30 days nor more than 90 days subsequent to the filing thereof, the member desires to be retired, provided the member at the time so specified for retirement has **completed 10 years of creditable service and has** attained age 60 and notwithstanding that during such period of notification the member may have separated from service. For the purposes of this section, a teacher member of group I who remains in service throughout a school year shall be deemed to be in service during July and August at the end of such school year.

2 Requirement for Receiving Service Retirement Benefits; Group II Members. Amend RSA 100-A:5, II(a) to read as follows:

(a) Any group II member in service who has attained age 45 and completed 20 years of creditable service, or who has attained age 60 [regardless of the number of] **and completed 10** years of creditable service, may retire on a service retirement allowance upon written application to the board of trustees setting forth at what time not less than 30 days nor more than 90 days subsequent to the filing thereof the member desires to be retired, notwithstanding that during such period of notification the member may have separated from service.

3 Right to Select Survivorship Option for Members who Qualify for Reduced Early Service Retirement. Amend RSA 100-A:13, I to read as follows:

I. Any member who has reached service retirement age as provided in RSA 100-A:5, I(a), **I(c)** or II(a), or RSA 100-A:19-b, or any retiree within 120 days after the effective date of retirement, may elect to receive, instead of the retirement allowance otherwise payable, a retirement allowance of equivalent actuarial value under one of the options named in paragraph III, or to redesignate any such option previously elected. The notice of election or change of retirement option shall be on a form designated by the board. The optional allowance shall be effective upon retirement if the election is made before the effective date of retirement, and on the first day of the month following receipt by the board of the notice of election or

change of option if made during the 120-day grace period. When an election or change of option is made during the 120-day grace period, no retroactive adjustments will be made in payments already received by the retiree. After expiration of the 120-day grace period no change in option selection shall be permitted except as provided in paragraph II. If a retiree dies after filing notice of election or change of option during the 120-day grace period but before the effective date, the election or change shall be effective as of the date of death. If a member dies after filing an election for a survivorship retirement option and before the effective date of retirement, whether or not the member has filed for retirement, the beneficiary who was nominated by the member in the election of the option may elect to receive either the optional survivor benefit which the member had elected or the ordinary death benefit provided under RSA 100-A:9, whichever is more advantageous to the beneficiary; provided that, in the case of the member's death before retirement, if the beneficiary named in the survivorship option election is not the same person as the beneficiary under RSA 100-A:9, then the death benefit under RSA 100-A:9, II, and not the survivorship option shall apply.

4 New Paragraph; Continuing Education for Retirement System Board of Trustees. Amend RSA 100-A:14 by inserting after paragraph III the following new paragraph:

III-a.(a) The board of trustees may authorize one or more of its members and one or more members of its administrative staff to attend continuing education conferences and seminars. The board shall have the authority to reimburse its members or staff for the costs associated with attendance at such conferences and seminars. Reimbursement for such costs shall be made from the administration account of the retirement system, as appropriated by the legislature.

(b) The board of trustees shall, in its minutes, disclose all the costs associated with, the board members or staff members attending, and the purposes of all seminars and conferences attended under subparagraph (a).

5 Rate of Interest Earned on Retirement System Funds. Amend RSA 100-A:16, II(g) to read as follows:

(g) All interest and dividends earned on the funds of the retirement system shall be credited to the state annuity accumulation fund. The board of trustees shall allow interest at such rate or rates as it shall determine from time to time on the individual accounts of members in the member annuity savings fund and shall annually transfer such interest amount from the state annuity accumulation fund. **The board of trustees shall only allow interest at 1/2 of the actuarial assumed interest rate on member withdrawn funds due to termination from active service.** Such interest shall be com-

pounded monthly or more frequently as the board of trustees may determine and shall be allowed to the date of processing upon termination of active service for any reason including withdrawal, retirement, or death.

6 Application; Requirement for 10 Years of Creditable Service. The provisions of RSA 100-A:5, I(a) and RSA 100-A:5, II(a), as amended by sections 1 and 2 of this act, respectively, which require group I and group II retirement system members to have completed 10 years of creditable service in order to retire on a service retirement allowance, shall apply prospectively only to all persons who become group I and group II members of the New Hampshire retirement system on or after July 1, 1992.

7 Effective Date. This act shall take effect July 1, 1992.

### AMENDED ANALYSIS

This bill amends the New Hampshire retirement system statutes by:

(1) Changing the requirements for eligibility for a service retirement allowance, by requiring at least 10 years' service.

(2) Authorizing board of trustee members and administrative staff to attend continuing education conferences.

(3) Extending the right to preselect a survivorship benefit for a spouse or beneficiary to members who qualify for reduced early service retirement.

(4) Limiting the interest allowed on member withdrawn funds due to termination from active service.

SENATOR BASS: Mr. President, this is a retirement bill that I introduced to deal with many of the problems that I perceived as having risen over the last couple of years. We have already dealt with many of these issues in the Senate a month or so ago. We all know that the House dealt with the question of adequate funding of the system. What this bill consists of are the sections that do not deal with those other issues. Most specifically, it contains a section requiring 10 years of creditable service in order to be vested, regardless of age. The second section adds to the early service retirement option the ability to take advantage of the split survivorship benefit provisions. Lastly, it contains a restriction on the continuing education conference and the requirement that the trustees of the retirement system be paid from the administrative account rather than from the accounts of the money managers. The committee urges your adoption of the committee report of ought to pass as amended.

SENATOR DISNARD: Could you explain number 4 on the analysis?

SENATOR BASS: Could you give me the reference in the calendar or not?

SENATOR DISNARD: Does your amendment . . .

SENATOR BASS: The whole bill is in the calendar, Senator Disnard. Why don't you look at page 49 that is where it begins.

SENATOR DISNARD: Instead of my going through all of that and reading it, can you tell me on the original bill as it is being presented to us today, is number four still included, repealing the special account?

SENATOR BASS: It is not included. All that stuff is gone. All that stuff relating to the special account, cost of living adjustments, all of that is deleted from the bill.

Committee amendment adopted.

Ordered to third reading.

**SB 308**, an act revising the business corporation act. Judiciary committee. No Recommendation. Senator Russman for the committee.

Senator Russman moved Ought to Pass.

SENATOR RUSSMAN: This is a rather comprehensive bill as you can see by the sheer mass of it. It is over 100 pages. It represents a great deal of work by a committee of practitioners, attorneys and business people who worked for about a year to try and come up with a more streamline, more efficient way of doing business in New Hampshire. I think that it is important to note that a number of the people that were on the committee that worked on this, were also on the committee that rewrote the corporation laws back in 1981. Now in part what triggered this was the fact that after we passed a new business corporation law in 1981 in 1982 nationally there was a model act that was then passed, so that set the stage for a great deal of change. Over the time that we have dealt with this, there have been several amendments. It is obviously a little unwieldy because it is so large. Even as the day before yesterday we met with the Secretary of State and the Attorney in his office who has been in charge of the corporations to go over 12 or 14 various things that they had difficulties with and those were all changed to correct that. Those were kind of administrable types of changes. There were some broader policy decisions, the use of trade names and things of that nature that the committee felt more comfortable leaving it in the hands of the Secretary of State's Office to determine trade name. Now as a procedural matter, this came out with no recommendation because we virtually at the time that we needed to vote on this to get it into the calendar, we didn't have the amendment actually phys-

ically in front of us, so we therefor, voted no recommendation at that time. I think as a matter of procedure I need to move ought to pass as a substitute motion, I believe, and offer the floor amendment that you have in front of you, which was the amendment that we ended up getting at the end of yesterday with the changes in it relative to what the Secretary of State asked for and also making the trade name issue what the current law is.

Adopted.

Recess.

Senator Podles in the Chair.

SENATOR RUSSMAN: The other thing that I think that is important to know here is that because of the complexity of the bill and potentially some lingering concerns by a couple of the Senators involved, I understand that the Senate President is going to address that issue relative to a subcommittee to work with the House Judiciary committee on this particular situation to resolve any further questions if they exist. I think it is an important piece of legislation. I think that you have to appreciate that the law doesn't remain the same, that the way of doing business doesn't necessarily stay the same. What was acceptable business or accounting practice 10 years ago, is not necessarily acceptable business or accounting practice today. I think that the various things that are in here are more realistic, and reality as far as how businesses practice and how companies may well incorporate there, rather than in Delaware which a number of them do at this time. I would urge that you pass the legislation and if there are specific questions I will try to answer them. I think that it is a good piece of legislation and I can't say that I have any fears in passing the bill.

Senator Russman offered a floor amendment.

**5262L & 5266L**

### **Amendment to SB 308**

Amend the bill by replacing all after the enacting clause with the following:

1 Business Corporation Act. RSA 293-A is repealed and reenacted to read as follows:

## **CHAPTER 293-A**

### **NEW HAMPSHIRE BUSINESS CORPORATION ACT**

#### **General Provisions**

##### **A. Short Title and Reservation of Power**

293-A:1.01 Short Title. This chapter shall be known and may be cited as the "New Hampshire Business Corporation Act."



293-A:1.02 Reservation of Power to Amend or Repeal. The general court has power to amend or repeal all or part of this chapter at any time and all domestic and foreign corporations subject to this chapter are governed by the amendment or repeal.

## **B. Filing Documents**

### **293-A:1.20 Filing Requirements.**

(a) A document shall satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing by the secretary of state.

(b) All required documents shall be filed in the office of the secretary of state.

(c) The document shall contain the information required by this chapter. It may contain other information as well.

(d) The document shall be typewritten or printed.

(e) The document shall be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

(f) The document shall be executed:

(1) By the chairman of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers.

(2) If directors have not been selected or the corporation has not been formed, by an incorporator.

(3) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(g) The person executing the document shall sign it and state beneath or opposite his signature his name and the capacity in which he signs. The document may but need not contain:

(1) The corporate seal.

(2) An attestation by the secretary or an assistant secretary.

(3) An acknowledgment, verification, or proof.

(h) If the secretary of state has prescribed a mandatory form for the document under RSA 293-A:1.21, the document shall be in or on the prescribed form.

(i) The document shall be delivered to the office of the secretary of state for filing and shall be accompanied by one exact or conformed copy, except as provided in RSA 293-A:5.03 and 293-A:15.09, the correct filing fee, and any franchise tax, license fee, or penalty required by this chapter or other law. Annual reports delivered for filing pursuant to RSA 293-A:16.22 need not be accompanied by an exact or conformed copy.

## 293-A:1.21 Forms.

(a) The secretary of state may prescribe and furnish on request forms for:

- (1) An application for a certificate of existence.
- (2) A foreign corporation's application for a certificate of authority to transact business in this state.
- (3) A foreign corporation's application for a certificate of withdrawal.
- (4) The annual report.

If the secretary of state so requires, use of these forms is mandatory.

(b) The secretary of state may prescribe and furnish on request forms for other documents required or permitted to be filed by this chapter but their use is not mandatory.

## 293-A:1.22 Filing, Service, Copying, and Special Fees.

(a) The secretary of state shall collect the following fees for:

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|--|-------|
| (1) Articles of incorporation  | \$35  |
| (2) Amendment of articles of incorporation                                 | \$35  |
| (3) Restatement of articles of incorporation with<br>amendment of articles | \$35  |
| (4) Articles of merger or share exchange                                   | \$35  |
| (5) Articles of dissolution  | \$35  |
| (6) Articles of revocation of dissolution                                  | \$35  |
| (7) Application for reinstatement following<br>administrative dissolution  | \$135 |
| (8) Application for certificate of authority                               | \$35  |
| (9) Application for amended certificate of<br>authority                    | \$35  |
| (10) Application for certificate of withdrawal                             | \$35  |
| (11) Articles of correction  | \$35  |

(b) The secretary of state shall collect the following fees for:

- |  |        |
|--|--------|
| (1) Application for use of indistinguishable name                            | \$15   |
| (2) Application for reserved name  | \$15   |
| (3) Notice of transfer of reserved name                                      | \$15   |
| (4) Application for registered name  | \$25   |
| (5) Application for renewal of registered name                               | \$25   |
| (6) Statement of change of registered<br>agent or registered office, or both | \$15   |
| (7) Agent's statement of resignation   | No fee |
| (8) Certificate of judicial dissolution                                      | No fee |
| (9) Certificate of revocation of authority to<br>transact business           | No fee |
| (10) Annual report   | \$100  |
| (11) Application for certificate of existence or<br>authorization            | \$ 5   |

- (12) Application for certificate of existence or authorization in long form \$10
- (13) Any other document required or permitted to be filed by this chapter \$15

(c) The secretary of state shall collect a fee of \$25 each time process is served on him under this chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if he prevails in the proceeding.

(d) The secretary of state shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

- (1) \$1 a page for copying; and
- (2) \$5 for the certificate.

(e) The secretary of state may collect fees for certain services, including but not limited to:

- (1) Expedited service or filing requests.
- (2) Direct access to corporations data.
- (3) Computer tapes.
- (4) Microfiche.
- (5) Customized lists and reports.

(6) Corporate information via telephone-based systems or facsimile machine.

(7) Other information services.

(f) The secretary of state may establish and collect such fees for the special services listed in subsection (e) as determined from time to time by the secretary of state.

#### 293-A:1.23 Effective Time and Date of Document.

(a) Except as provided in subsection (b) and RSA 293-A:1.24(c), a document accepted for filing is effective:

(1) At the close of business on the date it is filed, as evidenced by the secretary of state's date endorsement of the original document; or

(2) At the time specified in the document as its effective time on the date it is filed.

(b) A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than the ninetieth day after the date it is filed.

#### 293-A:1.24 Correcting Filed Document.

(a) A domestic or foreign corporation may correct a document filed by the secretary of state if the document (1) contains an incorrect statement or (2) was defectively executed, attested, sealed, verified, or acknowledged.

(b) A document is corrected:

(1) By preparing articles of correction that

(i) Describe the document (including its filing date) or attach a copy of it to the articles,

(ii) Specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective,

(iii) Correct the incorrect statement or defective execution; and

(2) By delivering the articles to the secretary of state for filing.

(c) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

**293-A:1.25 Filing Duty of Secretary of State.**

(a) If a document delivered to the office of the secretary of state for filing satisfies the requirements of RSA 293-A:1.20, the secretary of state shall file it.

(b) The secretary of state files a document by stamping or otherwise endorsing "Filed", together with his name and official title and the date of receipt, on both the original and the document copy. After filing a document, except as provided in RSA 293-A:5.03 and RSA 293-A:15.10, the secretary of state shall deliver the document copy to the domestic or foreign corporation or its representative.

(c) If the secretary of state refuses to file a document, he shall return it to the domestic or foreign corporation or its representative within 30 days after the document was delivered, together with a brief, written explanation of the reason for his refusal.

(d) The secretary of state and those acting on his behalf shall incur no liability, either personally or on behalf of the state of New Hampshire, as a result of defects or inconsistencies in the documents recorded by them under RSA 292, 293, 293-A and 296 or as a result of negligent acts or omissions in the handling and recording of those documents.

**293-A:1.26 Appeal From Secretary of State's Refusal to File Document.**

(a) If the secretary of state refuses to file a document delivered to his office for filing, the domestic or foreign corporation may appeal the refusal within 30 days after the return of the document to the superior court of the county where the corporation's registered office is or will be located. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the secretary of state's explanation of his refusal to file.

(b) The court may summarily order the secretary of state to file the document or take other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

**293-A:1.27 Evidentiary Effect of Copy of Filed Document.** A certificate attached or affixed to a copy of a document filed by the secretary of state, bearing his signature and the seal of this state (both of which may be in facsimile) is conclusive evidence that the original document is on file with the secretary of state.

**293-A:1.28 Certificate of Existence.**

(a) Anyone may apply to the secretary of state to furnish a certificate of existence for a domestic corporation or a certificate of authorization for a foreign corporation.

(b) A certificate of existence or authorization sets forth:

(1) The domestic corporation's corporate name or the foreign corporation's corporate name used in this state.

(2) That:

(i) The domestic corporation is duly incorporated under the law of this state, and the date of its incorporation; or

(ii) The foreign corporation is authorized to transact business in this state.

(3) That all fees, taxes, and penalties owed to this state have been paid, if:

(i) Payment is reflected in the records of the secretary of state; and

(ii) Nonpayment affects the existence or authorization of the domestic or foreign corporation.

(4) That its most recent annual report has been delivered to the secretary of state, if required.

(5) That articles of dissolution have not been filed.

(6) Other chapters of record in the office of the secretary of state that may be requested by the applicant.

(c) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the secretary of state may be relied upon as conclusive evidence that the domestic or foreign corporation is in existence or is authorized to transact business in this state.

**293-A:1.29 Penalty for Signing False Document.**

(a) A person commits an offense if he signs a document he knows is false in any material respect with intent that the document be delivered to the secretary of state for filing.

(b) An offense under this section is a misdemeanor.

### **C. Secretary of State**

**293-A:1.30 Powers.** The secretary of state has the power reasonably necessary to perform the duties required of him by this chapter.

293-A:1.31 License Fees Payable by Domestic Corporations.

(a) The secretary of state shall charge and collect from each domestic corporation license fees, based upon the number of shares which it will have authority to issue or the increase in the number of shares which it will have the authority to issue, at the time of:

- (1) Filing articles of incorporation;
- (2) Filing articles of amendment increasing the number of authorized shares; and
- (3) Filing articles of merger or consolidation increasing the number of authorized shares which the surviving or new corporation, if a domestic corporation, will have the authority to issue above the aggregate number of shares which the constituent domestic corporations and constituent foreign corporations authorized to transact business in this state had authority to issue.

(b) The license fees shall be as follows:

- |  |          |
|--|----------|
| (1) When the authorized shares<br>not exceed 300,                      | \$75.    |
| (2) When the authorized shares<br>exceed 300 but not exceed 1,000,     | \$100.   |
| (3) When the authorized shares<br>exceed 1,000 but not exceed 3,000,   | \$300.   |
| (4) When the authorized shares<br>exceed 3,000 but not exceed 5,000,   | \$400.   |
| (5) When the authorized shares<br>exceed 5,000 but not exceed 10,000,  | \$800.   |
| (6) When the authorized shares<br>exceed 10,000 but not exceed 20,000, | \$1,500. |
| (7) For each additional 100,000<br>shares above 20,000,                | \$100.   |

(c) The license fees payable on an increase in the number of authorized shares shall be such sum as, when added to the fees paid at the time of the original authorization and prior increase, if any, will make the total fees accord with the schedule under this section, provided, however, that the minimum fee shall be \$30.

293-A:1.32 License Fees Payable for Foreign Corporations. The secretary of state shall charge and collect from each foreign corporation a license fee of \$200 at the time of filing an application for a certificate of authority to transact business in this state.

293-A:1.33 Maintenance Fees Payable by Domestic Corporations. For the privilege of continuing its corporate franchise, every domestic corporation shall pay annually to the secretary of state, at the time of making its annual return, a franchise fee, also to be known as a maintenance fee, equal to the license fee paid upon filing its original articles of incorporation plus an amount equal to any additional license fees for increases in its authorized shares, if any. In case the

authorized shares are reduced, the annual franchise fee shall be equal to the amount which would have been required for the original license fee of a corporation with shares at the amount as reduced. In no case, however, shall the annual franchise fee be more than \$2,000 or less than \$100; and it shall not be required of any corporation which on April 1 of any year shall not have been incorporated more than 6 months.

293-A:1.34 Maintenance Fees Payable by Foreign Corporations. For the privilege of continuing to exercise its authority to transact business in this state, every foreign corporation authorized to transact business in this state shall pay annually to the secretary of state, at the time of making its annual return, a franchise fee, also to be known as a maintenance fee, of \$300. In no case, however, shall the annual franchise fee be required of any such corporation which on April 1 of any year shall not have been registered to transact business in the state for 6 months.

293-A:1.35 Assessment and Collection of Annual Fees. It shall be the duty of the secretary of state to collect all annual franchise fees and penalties imposed by, or assessed in accordance with, this chapter.

293-A:1.36 Penalties Imposed. Each corporation, domestic or foreign, that fails or refuses to file its annual report or to pay all associated fees related thereto, or both, for any year by April 15 shall be subject to an additional fee of \$50.

293-A:1.37 Administration.

(a) The secretary of state shall collect all fees required under this chapter and shall pay them to the state treasurer to be deposited in the general fund as unrestricted revenue, except as provided in subsections (b) and (c).

(b) The state treasurer shall pay the expenses of administering this chapter out of any money in the treasury not otherwise appropriated until the fees collected pursuant to RSA 293-A:1.22(a) have been received by him. Thereafter he shall pay the expenses of administering this chapter out of the fees collected under RSA 293-A:1.22(a) and shall reimburse the treasury for previous expenses paid by him. The governor is authorized to draw his warrant for the sums authorized by this section out of any money in the treasury not otherwise appropriated.

(c) Fees collected by the secretary of state pursuant to RSA 293-A:1.22(e) shall be deposited in the same manner as fees collected pursuant to RSA 293-A:1.22(a) and shall be available to the secretary to administer the provisions of this chapter in the same manner as provided in subsection (b) of this section.

**Interrogatories by Secretary of State; Penalties.**

(a) The secretary of state may propound to any corporation, domestic or foreign, subject to the provisions of this chapter, and to any officer or director of the corporation, interrogatories as may be reasonably necessary and proper to enable him to ascertain whether the corporation has complied with all the provisions of this chapter applicable to the corporation. Interrogatories shall be answered within 30 days after the mailing, or within such additional time as shall be fixed by the secretary of state. The answers to the interrogatories shall be full and complete and shall be made in writing and under oath. If the interrogatories are directed to an individual they shall be answered by him, and if directed to a corporation they shall be answered by its president, vice president, secretary or assistant secretary. The secretary of state shall not need to record any document to which the interrogatories relate until the interrogatories are answered as provided in this section, and then not if the answers to the interrogatories disclose that the document is not in conformity with the provisions of this chapter. The secretary of state shall certify to the attorney general, for such action as the attorney general may deem appropriate, all interrogatories and answers to interrogatories which disclose a violation of any of the provisions of this chapter.

(b) The attorney general may petition the superior court of the county in which the individual to whom interrogatories are directed resides, or in which the corporation has its registered office, or of Hillsborough county if the individual or corporation does not reside in or maintain a registered office in this state to seek enforcement of the interrogatories. To the extent that they are not in conflict with this section, all rules of the superior court relating to interrogatories shall be applicable to the interrogatories propounded by the secretary of state pursuant to this section.

(c) Interrogatories propounded by the secretary of state and the answers to the interrogatories shall not be open to public inspection nor shall the secretary of state disclose any facts or information obtained from the answers except insofar as his official duty may require it to be made public or in the event the interrogatories or their answers are required for evidence in any criminal proceedings or in any other action by the state.

(d) Each officer and director of a corporation, domestic or foreign, who fails or refuses within the time prescribed by this chapter to answer truthfully and fully interrogatories propounded to him by the secretary of state in accordance with the provisions of this chapter, or who signs any articles, statement, report, application or other



document filed with the secretary of state which is known to the officer or director to be false in any material respect, shall be guilty of a misdemeanor.

### **D. Definitions**

293-A:1.40 Definitions. In this chapter:

(1) "Articles of incorporation" include amended and restated articles of incorporation and articles of merger.

(2) "Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue.

(3) "Conspicuous" means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlined, is conspicuous.

(4) "Corporation" or "domestic corporation" means a corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of this chapter.

(5) "Deliver" includes mail.

(6) "Distribution" means a direct or indirect transfer of money or other property (except its own shares) or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or otherwise.

(7) "Effective date of notice" is defined in RSA 293-A:1.41.

(8) "Employee" includes an officer but not a director. A director may accept duties that make him also an employee.

(9) "Entity" includes corporation and foreign corporation; not-for-profit corporation; profit and not-for-profit unincorporated association; business trust, estate, partnership, trust, and 2 or more persons having a joint or common economic interest; and state, United States, and foreign government.

(10) "Foreign corporation" means a corporation for profit incorporated under a law other than the law of this state.

(11) "Governmental subdivision" includes agency, county, district, and municipality.

(12) "Includes" denotes a partial definition.

(13) "Individual" includes the estate of an incompetent or deceased individual.

(14) "Means" denotes an exhaustive definition.

(15) "Notice" is defined in RSA 293-A:1.41.

(16) "Person" includes individual and entity.

(17) "Principal office" means the office (in or out of this state) so designated in the annual report where the principal executive offices of a domestic or foreign corporation are located.

(18) "Proceeding" includes civil suit and criminal, administrative, and investigatory action.

(19) "Record date" means the date on which a corporation determines the identity of its shareholders and their shareholdings for purposes of this chapter. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

(20) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under RSA 293-A:8.40(c) for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

(21) "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(22) "Shares" means the units into which the proprietary interests in a corporation are divided.

(23) "State", when referring to a part of the United States, includes a state and commonwealth, and their agencies and governmental subdivisions, and a territory and insular possession, and their agencies and governmental subdivisions, of the United States.

(24) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

(25) "United States" includes district, authority, bureau, commission, department, and any other agency of the United States.

(26) "Voting group" means all shares of one or more classes or series that under the articles of incorporation or this chapter are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this chapter to vote generally on the matter are for that purpose a single voting group.

293-A:1.41 Notice.

(a) Notice under this chapter shall be in writing, unless oral notice is reasonable under the circumstances.

(b) Notice may be communicated in person; by telephone, telegraph, teletype, or other form of wire or wireless communication; or by mail or private carrier. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published; or by radio, television, or other form of public broadcast communication.

(c) Written notice by a domestic or foreign corporation to its shareholder, if in a comprehensible form, is effective when mailed, if mailed postpaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders.

(d) Written notice to a domestic or foreign corporation authorized to transact business in this state may be addressed to its registered agent at its registered office or to the corporation or its secretary at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

(e) Except as provided in subsection (c), written notice, if in a comprehensible form, is effective at the earliest of the following:

(1) When received.

(2) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

(3) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(f) Oral notice is effective when communicated if communicated in a comprehensible manner.

(g) If this chapter prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements, not inconsistent with this section or other provisions of this chapter, those requirements govern.

293-A:1.42 Number of Shareholders. For the purposes of this chapter:

(a) The following identified as a shareholder in a corporation's current record of shareholders constitutes one shareholder:

(1) Three or fewer coowners.

(2) A corporation, partnership, trust, estate, or other entity.

(3) The trustees, guardians, custodians, or other fiduciaries of a single trust, estate, or account.

(b) Shareholdings registered in substantially similar names constitute one shareholder if it is reasonable to believe that the names represent the same person.

### **Incorporators**

293-A:2.01 Incorporators. One or more persons may act as the incorporator or incorporators and incorporate a corporation by delivering articles of incorporation and the certification required by RSA 421-B:13, I-a(b) to the secretary of state for filing.

293-A:2.02 Articles of Incorporation.

(a) The articles of incorporation shall set forth:

(1) A corporate name for the corporation that satisfies the requirements of RSA 293-A:4.01.

(2) The number of shares the corporation is authorized to issue.

(3) The street address of the corporation's initial registered office and the name of its initial registered agent at that office.

(4) The name and address of each incorporator.

(b) The articles of incorporation may set forth:

(1) The names and addresses of the individuals who are to serve as the initial directors.

(2) Provisions not inconsistent with law regarding:

(i) The purposes for which the corporation is organized.

(ii) Managing the business and regulating the powers of the corporation, its board of directors, and shareholders.

(iii) Defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders.

(iv) A par value for authorized shares or classes of shares.

(v) The imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions.

(3) Any provision that under this chapter is required or permitted to be set forth in the bylaws.

(4) A provision eliminating or limiting the liability of a director, an officer, or both, to the corporation or its shareholders for money damages for any action taken, or any failure to take any action, as a director, except liability for:

(A) The amount of a financial benefit received by a director to which he is not entitled.

(B) An intentional infliction of harm on the corporation or the shareholders.

(C) A violation of RSA 293-A:8.33.

(D) An intentional violation of criminal law.

(c) The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.

#### 293-A:2.03 Incorporation.

(a) Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed.

(b) The secretary of state's filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

293-A:2.04 Liability for Preincorporation Transactions. All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under this chapter, are jointly and severally liable for all liabilities created while so acting.

#### 293-A:2.05 Organization of Corporation.

(a) After incorporation:

(1) If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the

call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting.

(2) If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

(i) To elect directors and complete the organization of the corporation; or

(ii) To elect a board of directors who shall complete the organization of the corporation.

(b) Action required or permitted by this chapter to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

(c) An organizational meeting may be held in or out of this state.

#### 293-A:2.06 Bylaws.

(a) The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

(b) The bylaws of a corporation may contain any provision for managing the business and regulating the affairs of the corporation that is not inconsistent with law or the articles of incorporation.

#### 293-A:2.07 Emergency Bylaws.

(a) Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency defined in subsection (d). The emergency bylaws, which are subject to amendment or repeal by the shareholders, may make all provision necessary for managing the corporation during the emergency, including:

(1) Procedures for calling a meeting of the board of directors.

(2) Quorum requirements for the meeting.

(3) Designation of additional or substitute directors.

(b) All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

(c) Corporate action taken in good faith in accordance with the emergency bylaws:

(1) Binds the corporation.

(2) May not be used to impose liability on a corporate director, officer, employee, or agent.

(d) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

### Purposes and Powers of Corporations

#### 293-A:3.01 Purposes.

(a) Every corporation incorporated under this chapter has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of incorporation.

(b) Notwithstanding the provisions of subsection (a), a corporation may not be organized under this chapter for the purpose of carrying on the businesses of banking, the construction and maintenance of railroads, the business of making contracts for the payment of money at a fixed date or upon the happening of some contingency, or the business of a trust, surety, indemnity or safe deposit company; provided, however, that if the commissioner of the department of transportation enters an order finding that it shall be in the public good and subject to such terms and conditions as he may prescribe in the public interest, a corporation may be formed pursuant to the provisions of this chapter to acquire, maintain and operate any existing line or railroad or street railway within this state.

293-A:3.02 General Powers. Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including without limitation power:

(1) To sue and be sued, complain and defend in its corporate name.

(2) To have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it.

(3) To make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for managing the business and regulating the affairs of the corporation.

(4) To purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located.

(5) To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property.

(6) To purchase, receive, subscribe for, or otherwise acquire; own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of; and deal in or with shares or other interests in, or obligations of, any other entity.

(7) To make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations (which may be convertible into or include the option to purchase other securities of the corporation), and secure any of its obligation by mortgage or pledge of any of its property, franchises, or income.

(8) To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment.

(9) To be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity.

(10) To conduct its business, locate offices, and exercise the powers granted by this chapter within or without this state.

(11) To elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit.

(12) To pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents.

(13) To make donations for the public welfare or for charitable, scientific, or educational purposes.

(14) To transact any lawful business that will aid governmental policy.

(15) To make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the corporation.

#### 293-A:3.03 Emergency Powers.

(a) In anticipation of or during an emergency defined in subsection (d), the board of directors of a corporation may:

(1) Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent.

(2) Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

(b) During an emergency defined in subsection (d), unless emergency bylaws provide otherwise:

(1) Notice of a meeting of the board of directors need be given only to those directors whom it is practicable to reach and may be given in any practicable manner, including by publication and radio.

(2) One or more officers of the corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

(c) Corporate action taken in good faith during an emergency under this section to further the ordinary business affairs of the corporation:

(1) Binds the corporation; and

(2) May not be used to impose liability on a corporate director, officer, employee, or agent.

(d) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

293-A:3.04 Ultra Vires. No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid because the corporation was without capacity or power to do the act or to make or receive the conveyance or transfer, but the lack of capacity or power may be asserted:

(a) In a proceeding by a shareholder against a corporation to enjoin the doing of any act or the transfer of real or personal property by or to the corporation. If the unauthorized act or transfer sought to be enjoined is being, or is to be, performed or made under a contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of the contract, and in so doing may allow to the corporation or to other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of the contract. Anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.

(b) In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through shareholders in a representative suit, against the incumbent or former directors or officers of the corporation.

(c) In a proceeding by the attorney general, as provided in this chapter to dissolve the corporation, or in a proceeding by the attorney general to enjoin the corporation from the transaction of unauthorized business.

### **Name**

293-A:4.01 Corporate Name.

(a) A corporate name shall:

(1) Contain the word "corporation," "incorporated," or "limited" or the abbreviation "corp.," "inc.," or "ltd.," or words or abbreviations of like import in another language

(2) Not contain language stating or implying that the corporation is organized for a purpose other than that permitted by RSA 293-A:3.01 and its articles of incorporation.

(b) Except as authorized by subsection (c) and (d), a corporate name shall not be the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this state or any foreign corporation authorized to transact business in this state, or a name the exclusive right to which is, at the time, reserved in the manner provided in this chapter, or the name of a corporation which has in effect a registration of its corporate name as provided in this



chapter, or the name of an agency or instrumentality of the United States or this state or a subdivision thereof, or the name of a proprietorship, partnership, New Hampshire investment trust, or an association registered as a trade name in this state.

(c) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable upon his records from one or more of the names described in subsection (b). The secretary of state shall authorize use of the name applied for if:

(1) The corporation consents to the use in writing and submits an undertaking in form satisfactory to the secretary of state to change its name to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation.

(2) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(d) A corporation may use the name (including the fictitious name) of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the proposed user corporation:

(1) Has merged with the other corporation.

(2) Has been formed by reorganization of the other corporation.

(3) Has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(e) This chapter does not control the use of fictitious names.

#### 293-A:4.02 Reserved Name.

(a) The exclusive right to the use of a corporate name may be reserved by:

(1) Any person intending to organize a corporation under this chapter;

(2) Any domestic corporation intending to change its name;

(3) Any foreign corporation intending to make application for a certificate of authority to transact business in this state;

(4) Any foreign corporation authorized to transact business in this state and intending to change its name; or

(5) Any person intending to organize a foreign corporation and intending to have the corporation make application for a certificate of authority to transact business in this state.

(b) The reservation shall be made by filing with the secretary of state an application to reserve a specified corporate name, executed by the applicant. If the secretary of state finds that the name is available for corporate use, he shall reserve the name for the exclusive use of the applicant for a period of 120 days.

(c) The right to the exclusive use of a specified corporate name so reserved may be transferred to any other person or corporation by filing in the office of the secretary of state a notice of the transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee.

293-A:4.03 Registered Name.

(a) Any corporation organized and existing under the laws of any state or territory of the United States may register its corporate name under this chapter, provided its corporate name is not the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this state, or the name of any foreign corporation authorized to transact business in this state, or any corporate name reserved or registered under this chapter, or the name of an agency or instrumentality of the United States or this state or a subdivision thereof, or the name of a proprietorship, partnership or an association registered as a trade name in this state.

(b) Registration shall be made by:

(1) Filing with the secretary of state

(i) An application for registration executed by the corporation by an officer of the corporation, setting forth the name of the corporation, the state or territory under the laws of which it is incorporated, the date of its incorporation, a statement that it is carrying on or doing business, and a brief statement of the business in which it is engaged; and

(ii) A certificate setting forth that the corporation is in good standing under the laws of the state or territory in which it is organized, executed by the secretary of state of the state or territory or by any other official who has custody of the records pertaining to corporations; and

(2) Paying to the secretary of state the permitted registration fee.

(c) Registration shall be effective until the close of the calendar year in which the application for registration is filed.

293-A:4.04 Renewal of Registered Name.

(a) A corporation which has in effect a registration of its corporate name may renew the registration from year to year by:

(1) Annually filing an application for renewal setting forth the facts required to be set forth in an original application for registration and a certificate of good standing as required for the original registration; and

(2) By paying the prescribed fee.

(b) A renewal application may be filed between October 1 and December 31 of each year, and shall extend the registration for the following calendar year.

### Office and Agent

293-A:5.01 Registered Office and Registered Agent. Each corporation shall continuously maintain in this state:

(1) A registered office that may be the same as any of its places of business.

(2) A registered agent, who may be:

(i) An individual who resides in this state and whose business office is identical with the registered office.

(ii) A domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office.

(iii) A foreign corporation or not-for-profit foreign corporation authorized to transact business in this state whose business office is identical with the registered office.

293-A:5.02 Change of Registered Office or Registered Agent.

(a) A corporation may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth:

(1) The name of the corporation.

(2) The street address of its current registered office.

(3) If the current registered office is to be changed, the street address of the new registered office.

(4) The name of its current registered office.

(5) If the current registered agent is to be changed, the name of the new registered agent.

(6) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(b) If a registered agent changes the street address of his business office, he may change the street address of the registered office of any corporation for which he is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement that complies with the requirements of subsection (a) and recites that the corporation has been notified of the change.

293-A:5.03 Resignation of Registered Agent.

(a) A registered agent may resign his agency appointment by signing and delivering to the secretary of state for filing the signed original and one exact or conformed copy of a statement of resignation. The statement may include a statement that the registered office is also discontinued.

(b) After filing the statement the secretary of state shall mail the copy to the corporation at its principal office.

(c) The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

**293-A:5.04 Service on Corporation.**

(a) A corporation's registered agent is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation.

(b) If a corporation has no registered agent, or the agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office. Service is perfected under this subsection at the earliest of:

(1) The date the corporation receives the mail.

(2) The date shown on the return receipt, if signed on behalf of the corporation.

(3) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

(c) This section does not prescribe the only means, or necessarily the required means, of serving a corporation.

**A. Shares and Distributions**

**293-A:6.01 Authorized Shares.**

(a) The articles of incorporation shall prescribe the classes of shares and the number of shares of each class that the corporation is authorized to issue. If more than one class of shares is authorized, the articles of incorporation shall prescribe a distinguishing designation for each class, and, prior to the issuance of shares of a class, the preferences, limitations, and relative rights of that class shall be described in the articles of incorporation. All shares of a class shall have preferences, limitations, and relative rights identical with those of other shares of the same class except to the extent otherwise permitted by RSA 293-A:6.02.

(b) The articles of incorporation shall authorize:

(1) One or more classes of shares that together have unlimited voting rights; and

(2) One or more classes of shares (which may be the same class or classes as those with voting rights) that together are entitled to receive the net assets of the corporation upon dissolution.

(c) The articles of incorporation may authorize one or more classes of shares that:

(1) Have special, conditional, or limited voting rights, or no right to vote, except to the extent prohibited by this chapter.

(2) Are redeemable or convertible as specified in the articles of incorporation:

(i) At the option of the corporation, the shareholder, or another person or upon the occurrence of a designated event.

(ii) For cash, indebtedness, securities, or other property.

(iii) In a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events.

(3) Entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative.

(4) Have preference over any other class of shares with respect to distributions, including dividends and distributions upon the dissolution of the corporation.

(d) The description of the designations, preferences, limitations, and relative rights of share classes in subsection (c) is not exhaustive.

293-A:6.02 Terms of Class or Series Determined by Board of Directors.

(a) If the articles of incorporation so provide, the board of directors may determine, in whole or part, the preferences, limitations, and relative rights, within the limits set forth in RSA 293-A:6.01, of:

(1) Any class of shares before the issuance of any shares of that class; or

(2) One or more series within a class before the issuance of any shares of that series.

(b) Each series of a class shall be given a distinguishing designation.

(c) All shares of a series shall have preferences, limitations, and relative rights identical with those of other shares of the same series and, except to the extent otherwise provided in the description of the series, with those of other series of the same class.

(d) Before issuing any shares of a class or series created under this section, the corporation shall deliver to the secretary of state for filing articles of amendment, which are effective without shareholder action, that set forth:

(1) The name of the corporation;

(2) The text of the amendment determining the terms of the class or series of shares.

(3) The date it was adopted.

(4) A statement that the amendment was duly adopted by the board of directors.

**293-A:6.03 Issued and Outstanding Shares.**

(a) A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued are outstanding shares until they are reacquired, redeemed, converted, or cancelled.

(b) The reacquisition, redemption, or conversion of outstanding shares is subject to the limitations of subsection (c) and to RSA 293-A:6.40.

(c) At all times that shares of the corporation are outstanding, one or more shares that together have unlimited voting rights and one or more shares that together are entitled to receive the net assets of the corporation upon dissolution shall be outstanding.

**293-A:6.04 Fractional Shares.**

(a) A corporation may:

(1) Issue fractions of a share or pay in money the value of fractions of a share.

(2) Arrange for disposition of fractional shares by the shareholders.

(3) Issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.

(b) Each certificate representing scrip must be conspicuously labeled "scrip" and must contain the information required by RSA 293-A:6.25(b).

(c) The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends, and to participate in the assets of the corporation upon liquidation. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.

(d) The board of directors may authorize the issuance of scrip subject to any condition considered desirable, including:

(1) That the scrip will become void if not exchanged for full shares before a specified date.

(2) That the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scripholders.

**B. Issuance of Shares****293-A:6.20 Subscription for Shares Before Incorporation.**

(a) A subscription for shares entered into before incorporation is irrevocable for 6 months, unless the subscription agreement provides a longer or shorter period or all the subscribers agree to revocation.

(b) The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation, unless the subscription agreement specifies them. A call for pay-

ment by the board of directors shall be uniform so far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.

(c) Shares issued pursuant to subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.

(d) If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid more than 20 days after the corporation sends written demand for payment to the subscriber.

(e) A subscription agreement entered into after incorporation is a contract between the subscriber and the corporation subject to RSA 293-A:6.21.

#### 293-A:6.21 Issuance of Shares.

(a) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.

(b) The board of directors may authorize share to be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation.

(c) Before the corporation issues shares, the board of directors shall determine that the consideration received or to be received for shares to be issued is adequate. That determination by the board of directors is conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid, and nonassessable.

(d) When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued therefor are fully paid and nonassessable.

(e) The corporation may place in escrow shares issued for a contract for future services or benefits or a promissory note, or make other arrangements to restrict the transfer of the shares, and may credit distributions in respect of the shares against their purchase price, until the services are preformed, the note is paid, or the benefits received. If the services are not performed, the note is not paid, or the benefits are not received, the shares escrowed or restricted and the distributions credited may be cancelled in whole or in part.

#### 293-A:6.22 Liability of Shareholders.

(a) A purchaser from a corporation of its own shares is not liable to the corporation or its creditors with respect to the shares except

to pay the consideration for which the shares were authorized to be issued under RSA 293-A:6.21 or specified in the subscription agreement under RSA 293-A:6.20.

(b) Unless otherwise provided in the articles of incorporation, a shareholder of a corporation is not personally liable for the acts or debts of the corporation except that he may become personally liable by reason of his own acts or conduct.

**293-A:6.23 Share Dividends.**

(a) Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's shareholders or to the shareholders of one or more classes or series. An issuance of shares under this subsection is a share dividend.

(b) Shares of one class or series may not be issued as a share dividend in respect of shares of another class or series unless:

(1) The articles of incorporation so authorize.

(2) A majority of the votes entitled to be cast by the class or series to be issued approve the issue.

(3) There are no outstanding shares of the class or series to be issued.

(c) If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, it is the date the board of directors authorizes the share dividend.

**293-A:6.24 Share Options.** A corporation may issue rights, options, or warrants for the purchase of shares of the corporation. The board of directors shall determine the terms upon which the rights, options, or warrants are issued, their form and content, and the consideration for which the shares are to be issued.

**293-A:6.25 Form and Content of Certificates.**

(a) Shares may, but need not be represented by certificates. Unless this chapter or another statute expressly provides otherwise, the rights and obligations of shareholders are identical whether or not their shares are represented by certificates.

(b) At a minimum each share certificate shall state on its face:

(1) The name of the issuing corporation and that it is organized under the law of this state.

(2) The name of the person to whom issued.

(3) The number and class of shares and the designation of the series, if any, the certificate represents.

(c) If the issuing corporation is authorized to issue different classes of shares or different series within a class, the designations, relative rights, preferences, and limitations applicable to each class and the variations in rights, preferences, and limitations determined for each series, and the authority of the board of directors to determine variations for future series, shall be summarized on the front



or back of each certificate. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information on request in writing and without charge.

(d) Each share certificate:

(1) Shall be signed, either manually or in facsimile, by 2 officers designated in the bylaws or by the board of directors; and

(2) May bear the corporate seal or its facsimile.

(e) If the person who signed, either manually or in facsimile, a share certificate no longer holds office when the certificate is issued, the certificate is nevertheless valid.

#### 293-A:6.26 Shares Without Certificates.

(a) Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issue of some or all of the shares or any or all of its classes or series without certificates. The authorization does not affect shares already represented by certificates, until they are surrendered to the corporation.

(b) Within a reasonable time after the issue or transfer of shares without certificates, the corporation shall send the shareholder a written statement of the information required on certificates by RSA 293-A:6.25(b) and (c), and, if applicable, RSA 293-A:6.27.

#### 293-A:6.27 Restriction on Transfer of Shares and Other Securities.

(a) The articles of incorporation, bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation. A restriction does not affect shares issued before the restriction was adopted, unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction.

(b) A restriction on the transfer or registration of transfer of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate or is contained in the information statement required by RSA 293-A:6.26(b). Unless so noted, a restriction is not enforceable against a person without knowledge of the restriction.

(c) A restriction on the transfer or registration of transfer of shares is authorized:

(1) To maintain the corporation's status when it is dependent on the number or identity of its shareholders.

(2) To preserve exemptions under federal or state securities law.

(3) For any other reasonable purpose.

(d) A restriction on the transfer or registration of transfer of shares may:

(1) Obligate the shareholder first to offer the corporation or other persons separately, consecutively, or simultaneously an opportunity to acquire the restricted shares.

(2) Obligate the corporation or other persons (separately, consecutively, or simultaneously) to acquire the restricted shares.

(3) Require the corporation, the holders of any class of its shares, or another person to approve the transfer of the restricted shares, if the requirement is not manifestly unreasonable.

(4) Prohibit the transfer of the restricted shares to designated persons or classes of persons, if the prohibition is not manifestly unreasonable.

(e) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

293-A:6.28 Expense of Issue. A corporation may pay the expenses of selling or underwriting its shares, and of organizing or reorganizing the corporation, from the consideration received for shares.

### **C. Subsequent Acquisition of Shares by Shareholders and Corporation**

293-A:6.30 Shareholder's Preemptive Rights.

(a) The shareholders of a corporation do not have a preemptive right to acquire the corporation's unissued shares except to the extent the articles of incorporation so provide.

(b) A statement included in the articles of incorporation that "the corporation elects to have preemptive rights", or words of similar import, means that the following principles apply except to the extent the articles of incorporation expressly provide otherwise:

(1) The shareholders of the corporation have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right, to acquire proportional amounts of the corporation's unissued shares upon the decision of the board of directors to issue them.

(2) A shareholder may waive his preemptive right. A waiver evidenced by a writing is irrevocable even though it is not supported by consideration.

(3) There is no preemptive right with respect to:

(i) Shares issued as compensation to directors, officers, agents, or employees of the corporation, its subsidiaries or affiliates.

(ii) Shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents, or employees of the corporation, its subsidiaries or affiliates.

(iii) Shares authorized in articles of incorporation that are issued within 6 months after the effective date of incorporation.

(iv) Shares sold otherwise than for money.

(4) Holders of shares of any class without general voting rights but with preferential rights to distributions or assets have no preemptive rights with respect to shares of any class.

(5) Holders of shares of any class with general voting rights, but without preferential rights to distributions or assets, have no preemptive rights with respect to shares of any class with preferential rights to distributions or assets, unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire shares without preferential rights.

(6) Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of one year after being offered to shareholders at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of one year is subject to the shareholders' preemptive rights.

(c) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

#### 293-A:6.31 Corporation's Acquisition of its Own Shares.

(a) A corporation may acquire its own shares and shares so acquired constitute authorized but unissued shares.

(b) If the articles of incorporation prohibit the reissue of acquired shares, the number of authorized shares is reduced by the number of shares acquired, effective upon amendment of the articles of incorporation.

(c) The board of directors may adopt articles of amendment under this section without shareholder action and deliver them to the secretary of state for filing. The articles shall set forth:

(1) The name of the corporation.

(2) The reduction in the number of authorized shares, itemized by class and series.

(3) The total number of authorized shares, itemized by class and series, remaining after reduction of the shares.

### D. Distributions

#### 293-A:6.40 Distributions to Shareholders.

(a) A board of directors may authorize, and the corporation may make, distributions to its shareholders, subject to restriction by the articles of incorporation and the limitation in subsection (c).

(b) If the board of directors does not fix the record date for determining shareholders entitled to a distribution, other than one involving a purchase, redemption, or other acquisition of the corporation's shares, it is the date the board of directors authorizes the distribution.

(c) No distribution may be made if, after giving it effect:

(1) The corporation would not be able to pay its debts as they become due in the usual course of business.

(2) The corporation's total assets would be less than the sum of its total liabilities plus, unless the articles of incorporation permit otherwise, the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

(d) The board of directors may base a determination that a distribution is not prohibited under subsection (c) either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(e) Except as provided in subsection (g), the effect of a distribution under subsection (c) is measured:

(1) In the case of distribution by purchase, redemption, or other acquisition of the corporation's shares, as of the earlier of:

(i) The date money or other property is transferred or debt incurred by the corporation; or

(ii) The date the shareholder ceases to be shareholder with respect to the acquired shares.

(2) In the case of any other distribution of indebtedness, as of the date the indebtedness is distributed.

(3) In all other cases, as of:

(i) The date the distribution is authorized if the payment occurs within 120 days after the date of authorization; or

(ii) The date the payment is made if it occurs more than 120 days after the date of authorization.

(f) A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.

(g) Indebtedness of a corporation, including indebtedness issued as a distribution, is not considered a liability for purposes of determinations under subsection (c) if its terms provide that payment of principal and interest are made only if and to the extent that payment of a distribution to shareholders could then be made under this section. If the indebtedness is issued as a distribution, each payment

of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is actually made.

## **Shareholders**

### **A. Meetings**

#### **293-A:7.01 Annual Meeting.**

(a) A corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws.

(b) Annual shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.

(c) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

#### **293-A:7.02 Special Meeting.**

(a) A corporation shall hold a special meeting of shareholders:

(1) On call of its board of directors or the person or persons authorized to do so by the articles of incorporation or bylaws.

(2) If the holders of at least 10 percent of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation's secretary one or more written demands for the meeting describing the purpose or purposes for which it is to be held.

(b) If not otherwise fixed under RSA 293-A:7.03 or RSA 293-A:7.07, the record date for determining shareholders entitled to demand a special meeting is the date the first shareholder signs the demand.

(c) Special shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.

(d) Only business within the purpose or purposes described in the meeting notice required by RSA 293-A:7.05(c), may be conducted at a special shareholders' meeting.

#### **293-A:7.03 Court-Ordered Meeting.**

(a) The superior court of the county where a corporation's principal office, or, if none in this state, its registered office, is located may summarily order a meeting to be held:

(1) On application of any shareholder of the corporation entitled to participate in an annual meeting if an annual meeting was not held within the earlier of 6 months after the end of the corporation's fiscal year or 15 months after its last annual meeting.

(2) On application of a shareholder who signed a demand for a special meeting valid under RSA 293-A:7.02, if:

(i) Notice of the special meeting was not given within 30 days after the date the demand was delivered to the corporation's secretary; or

(ii) The special meeting was not held in accordance with the notice.

(b) The court may fix the time and place of the meeting, determine the shares entitled to participate in the meeting, specify a record date for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting, or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary to accomplish the purpose or purposes of the meeting.

#### 293-A:7.04 Action Without Meeting.

(a) Action required or permitted by this chapter to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by all the number of shareholders necessary to validly approve the action. The action must be evidenced by one or more written consents describing the action taken, signed by all the number of shareholders necessary to validly approve the action, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) If not otherwise fixed under RSA 293-A:7.03 or RSA 293-A:7.07, the record date for determining shareholders entitled to take action without a meeting is the date the first shareholder signs the consent under subsection (a).

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

(d) If this chapter requires that notice of proposed action be given to nonvoting shareholders and the action is to be taken by consent of the voting shareholders necessary to approve the action the corporation shall give its nonvoting shareholders written notice of the proposed action within 10 days after the action is taken. The notice shall contain or be accompanied by the same material that, under this chapter, would have been required to be sent to nonvoting shareholders in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.

#### 293-A:7.05 Notice of Meeting.

(a) A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting no fewer than 10 nor more than 60 days before the meeting date. Unless this chap-

ter or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.

(b) Unless this chapter or the articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.

(c) Notice of a special meeting shall include a description of the purpose or purposes for which the meeting is called.

(d) If not otherwise fixed under RSA 293-A:7.03 or RSA 293-A:7.07, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the day before the first notice is delivered to shareholders.

(e) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or shall be fixed under RSA 293-A:7.07, however, notice of the adjourned meeting must be given under this section to persons who are shareholders as of the new record date.

#### 293-A:7.06 Waiver of Notice.

(a) A shareholder may waive any notice required by this chapter, the articles of incorporation, or bylaws before or after the date and time stated in the notice. The waiver shall be in writing, be signed by the shareholder entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) A shareholder's attendance at a meeting:

(1) Waives objection to lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting.

(2) Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

#### 293-A:7.07 Record Date.

(a) The bylaws may fix or provide the manner of fixing the record date for one or more voting groups in order to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote, or to take any other action. If the bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix a future date as the record date.

(b) A record date fixed under this section shall not be more than 70 days before the meeting or action requiring a determination of shareholders.

(c) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it shall do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting.

(d) If a court orders a meeting adjourned to a date more than 120 days after the date fixed for the original meeting, it may provide that the original record date continues in effect or it may fix a new record date.

## **B. Voting**

### **293-A:7.20 Shareholders' List for Meeting.**

(a) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. The list shall be arranged by voting group, and within each voting group by class or series of shares, and show the address of and number of shares held by each shareholder.

(b) The shareholders' list shall be available for inspection by any shareholder, beginning 2 business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholder, his agent, or attorney is entitled on written demand to inspect and, subject to the requirements of RSA 293-A:16.02(c), to copy the list, during regular business hours and at his expense, during the period it is available for inspection.

(c) The corporation shall make the shareholders' list available at the meeting, and any shareholder, his agent, or attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(d) If the corporation refuses to allow a shareholder, his agent, or attorney to inspect the shareholders' list before or at the meeting, or copy the list as permitted by subsection (b), the superior court of the county where a corporation's principal office, or, if none in this state, its registered office, is located, on application of the shareholder, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

(e) Refusal or failure to prepare or make available the shareholders' list does not affect the validity of action taken at the meeting.

### **293-A:7.21 Voting Entitlement of Shares.**

(a) Except as provided in subsections (b) and (c), or unless the articles of incorporation provide otherwise, each outstanding share,



regardless of class, is entitled to one vote on each matter voted on at a shareholders' meeting. Only shares are entitled to vote.

(b) Absent special circumstances, the shares of a corporation are not entitled to vote if they are owned, directly or indirectly, by a second corporation, domestic or foreign, and the first corporation owners, directly or indirectly, own a majority of the shares entitled to vote for directors of the second corporation.

(c) Subsection (b) shall not limit the power of a corporation to vote any shares, including its own shares, held by it in a fiduciary capacity.

(d) Redeemable shares are not entitled to vote after notice of redemption is mailed to the holders and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution under an irrevocable obligation to pay the holders the redemption price on surrender of the shares.

293-A:7.22 Proxies.

(a) A shareholder may vote his shares in person or by proxy.

(b) A shareholder may appoint a proxy to vote or otherwise act for him by signing an appointment form, either personally or by his attorney-in-fact.

(c) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for 11 months, unless a longer period is expressly provided in the appointment form.

(d) An appointment of a proxy is revocable by the shareholder, unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

(1) A pledgee.

(2) A person who purchased or agreed to purchase the shares.

(3) A creditor of the corporation who extended it credit under terms requiring the appointment.

(4) An employee of the corporation whose employment contract requires the appointment.

(5) A party to a voting agreement created under RSA 293-A:7.31.

(e) The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises his authority under the appointment.

(f) An appointment made irrevocable under subsection (d) is revoked when the interest with which it is coupled is extinguished.

(g) A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if he did not know of its existence when he acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

(h) Subject to RSA 293-A:7.24 and to any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

**293-A:7.23 Shares Held by Nominees.**

(a) A corporation may establish a procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as the shareholder. The extent of this recognition may be determined in the procedure.

(b) The procedure may set forth:

(1) The types of nominees to which it applies.

(2) The rights or privileges that the corporation recognizes in a beneficial owner.

(3) The manner in which the procedure is selected by the nominee.

(4) The information that must be provided when the procedure is selected.

(5) The period for which selection of the procedure is effective.

(6) Other aspects of the rights and duties created.

**293-A:7.24 Corporation's Acceptance of Votes.**

(a) If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a shareholder, the corporation if acting in good faith is entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder.

(b) If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the name of its shareholder, the corporation if acting in good faith is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder if:

(1) The shareholder is an entity and the name signed purports to be that of an officer or agent of the entity.

(2) The name signed purports to be that of an administrator, executor, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment.

(3) The name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment.

(4) The name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, consent, waiver, or proxy appointment.

(5) Two or more persons are the shareholder as cotenants or fiduciaries and the name signed purports to be the name of at least one of the co-owners and the person signing appears to be acting on behalf of all the co-owners.

(c) The corporation is entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

(d) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section are not liable in damages to the shareholder for the consequences of the acceptance or rejection.

(e) Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

#### 293-A:7.25 Quorum and Voting Requirements for Voting Groups.

(a) Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incorporation or this chapter provide otherwise, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

(b) Once a share is represented for any purpose at a meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or shall be set for that adjourned meeting.

(c) If a quorum exists, action on a matter, other than the election of directors, by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless the articles of incorporation or this chapter require a greater number of affirmative votes.

(d) An amendment of articles of incorporation adding, changing, or deleting a quorum or voting requirement for a voting group greater than specified in subsections (a) or (c) is governed by RSA 293-A:7.27.

(e) The election of directors is governed by RSA 293-A:7.28.

293-A:7.26 Action by Single and Multiple Voting Groups.

(a) If the articles of incorporation or this chapter provide for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group as provided in RSA 293-A:7.25.

(b) If the articles of incorporation or this chapter provide for voting by 2 or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in RSA 293-A:7.25. Action may be taken by one voting group on a matter even though no action is taken by another voting group entitled to vote on the matter.

293-A:7.27 Greater Quorum or Voting Requirements.

(a) The articles of incorporation may provide for a greater quorum or voting requirement for shareholders, or voting groups of shareholders, than is provided for by this chapter.

(b) An amendment to the articles of incorporation that adds, changes, or deletes a greater quorum or voting requirement shall meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

293-A:7.28 Voting for Directors; Cumulative Voting.

(a) Unless otherwise provided in the articles of incorporation, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present.

(b) Shareholders do not have a right to cumulate their votes for directors unless the articles of incorporation so provide.

(c) A statement included in the articles of incorporation that "all or a designated voting group of shareholders are entitled to cumulate their votes for directors," or words of similar import, means that the shareholders designated are entitled to multiply the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and cast the product for a single candidate or distribute the product among 2 or more candidates.

(d) Shares otherwise entitled to vote cumulatively shall not be voted cumulatively at a particular meeting unless:

(1) The meeting notice or proxy statement accompanying the notice states conspicuously that cumulative voting is authorized; or

(2) A shareholder who has the right to cumulate his votes gives notice to the corporation not less than 48 hours before the time set for the meeting of his intent to cumulate his votes during the meeting, and if one shareholder gives this notice all other shareholders in the same voting group participating in the election are entitled to cumulate their votes without giving further notice.

### **C. Voting Trusts and Agreements**

#### **293-A:7.30 Voting Trusts.**

(a) One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust, which may include anything consistent with its purpose, and transferring their shares to the trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all owners of beneficial interests in the trust, together with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the corporation's principal office.

(b) A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee's name. A voting trust is valid for not more than 10 years after its effective date, unless extended under subsection (c).

(c) All or some of the parties to a voting trust may extend it for additional terms of not more than 10 years each by signing an extension agreement and obtaining the voting trustee's written consent to the extension. An extension is valid for 10 years from the date the first shareholder signs the extension agreement. The voting trustee shall deliver copies of the extension agreement and list of beneficial owners to the corporation's principal office. An extension agreement binds only those parties signing it.

#### **293-A:7.31 Voting Agreements.**

(a) Two or more shareholders may provide for the manner in which they will vote their shares by signing an agreement for that purpose. A voting agreement created under this section is not subject to the provisions of RSA 293-A:7.30.

(b) A voting agreement created under this section is specifically enforceable.

#### **293-A:7.32 Shareholder Agreements.**

(a) An agreement among the shareholders of a corporation that complies with this section is effective among the shareholders and the corporation even though it is inconsistent with one or more other provisions of this chapter in that it:

(1) Eliminates the board of directors or restricts the discretion or powers of the board of directors.

(2) Governs the authorization or making of distributions whether or not in proportion to ownership of shares, subject to the limitations in RSA 293-A:6.40.

(3) Establishes who shall be directors or officers of the corporation, or their terms of office or manner of selection or removal.

(4) Governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including use of weighted voting rights or director proxies.

(5) Establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director, officer or employee of the corporation or among any of them.

(6) Transfers to one or more shareholders or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or shareholders.

(7) Requires dissolution of the corporation at the request of one or more of the shareholders or upon the occurrence of a specified event or contingency.

(8) Otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the shareholders, the directors and the corporation, or among any of them, and is not contrary to public policy.

(b) An agreement authorized by this section shall be:

(1) Set forth:

(A) In the articles of incorporation or bylaws and approved by all persons who are shareholders at the time of the agreement; or

(B) In a written agreement that is signed by all persons who are shareholders at the time of the agreement and is made known to the corporation.

(2) Subject to amendment only by all persons who are shareholders at the time of the amendment, unless the agreement provides otherwise.

(3) Valid for 10 years, unless the agreement provides otherwise.

(c) The existence of an agreement authorized by this section shall be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement as required by RSA 293-A:6.26(b). If at the time of the agreement the corporation has shares outstanding represented by certificates, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or information statement

shall not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of shares who, at the time of purchase, did not have knowledge of the existence of the agreement shall be entitled to rescission of the purchase. A purchaser shall be deemed to have knowledge of the existence of the agreement if its existence is noted on the certificate or information statement for the shares in compliance with this subsection and, if the shares are not represented by a certificate, the information statement is delivered to the purchaser at or prior to the time of purchase of the shares. An action to enforce the right of rescission authorized by this subsection shall be commenced within the earlier of 90 days after discovery of the existence of the agreement or 2 years after the time of purchase of the shares.

(d) An agreement authorized by this section shall cease to be effective when shares of the corporation are listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association. If the agreement ceases to be effective for any reason, the board of directors may adopt, if the agreement is contained or referred to in the corporation's articles of incorporation or bylaws, an amendment to the articles of incorporation or bylaws, without shareholder action, to delete the agreement and any references to it.

(e) An agreement authorized by this section that limits the discretion or powers of the board of directors shall relieve the directors of, and impose upon the person or persons in whom such discretion or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

(f) The existence or performance of an agreement authorized by this section shall not be a ground for imposing personal liability on any shareholder for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

(g) Incorporators or subscribers for shares may act as shareholders with respect to an agreement authorized by this section if no shares have been issued when the agreement is made.

#### **D. Derivative Proceedings**

293-A:7.40 Definitions. For the purposes of this subdivision:

(1) "Derivative proceeding" means a civil suit in the right of a domestic corporation or, to the extent provided in RSA 293-A:7.47, in the right of a foreign corporation.

(2) "Shareholder" includes a beneficial owner whose shares are held in a voting trust or held by a nominee on the beneficial owner's behalf.

293-A:7.41 Standing. A shareholder may not commence or maintain a derivative proceeding unless the shareholder:

(1) Was a shareholder of the corporation at the time of the act or omission complained of or became a shareholder through transfer by operation of law from one who was a shareholder at that time; and

(2) Fairly and adequately represents the interests of the corporation in enforcing the right of the corporation.

293-A:7.42 Demand. No shareholder shall commence a derivative proceeding until:

(1) A written demand has been made upon the corporation to take suitable action; and

(2) Ninety days have expired from the date the demand was made unless the shareholder has earlier been notified that the demand has been rejected by the corporation or unless irreparable injury to the corporation would result by waiting for the expiration of the 90-day period.

293-A:7.43 Stay of Proceedings. If the corporation commences an inquiry into the allegations made in the demand or complaint, the court may stay any derivative proceeding for such period as the court deems appropriate.

293-A:7.44 Dismissal.

(a) A derivative proceeding shall be dismissed by the court on motion by the corporation if one of the groups specified in subsections (b) or (f) has determined in good faith after conducting a reasonable inquiry upon which its conclusions are based that the maintenance of the derivative proceeding is not in the best interests of the corporation.

(b) Unless a panel is appointed pursuant to subsection (f), the determination in subsection (a) shall be made by:

(1) A majority vote of independent directors present at a meeting of the board of directors if the independent directors constitute a quorum; or

(2) A majority vote of a committee consisting of 2 or more independent directors appointed by majority vote of independent directors present at a meeting of the board of directors, whether or not such independent directors constituted a quorum.

(c) None of the following shall by itself cause a director to be considered not independent for purposes of this section:

(1) The nomination or election of the director by persons who are defendants in the derivative proceeding or against whom action is demanded.



(2) The naming of the director as a defendant in the derivative proceeding or as a person against whom action is demanded.

(3) The approval by the director of the act being challenged in the derivative proceeding or demand if the act resulted in no personal benefit to the director.

(d) If a derivative proceeding is commenced after a determination has been made rejecting a demand by a shareholder, the complaint shall allege with particularity facts establishing either:

(1) That a majority of the board of directors did not consist of independent directors at the time the determination was made; or

(2) That the requirements of subsection (a) have not been met.

(e) If a majority of the board of directors does not consist of independent directors at the time the determination is made, the corporation shall have the burden of proving that the requirements of subsection (a) have been met. If a majority of the board of directors consists of independent directors at the time the determination is made, the plaintiff shall have the burden of proving that the requirements of subsection (a) have not been met.

(f) The court may appoint a panel of one or more independent persons upon motion by the corporation to make a determination whether the maintenance of the derivative proceeding is in the best interests of the corporation. In such case, the plaintiff shall have the burden of proving that the requirements of subsection (a) have not been met.

293-A:7.45 Discontinuance or Settlement. A derivative proceeding shall not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the corporation's shareholders or a class of shareholders, the court shall direct that notice be given to the shareholders affected.

293-A:7.46 Payment of Expenses. On termination of the derivative proceeding the court may:

(1) Order the corporation to pay the plaintiff's reasonable expenses, including counsel fees, incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the corporation.

(2) Order the plaintiff to pay any defendant's reasonable expenses, including counsel fees, incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose.

(3) Order a party to pay an opposing party's reasonable expenses, including counsel fees, incurred because of the filing of a pleading, motion or other paper, if it finds that the pleading, motion or other paper was not well-grounded in fact, after reasonable inquiry, or warranted by existing law or a good faith argument for the

extension, modification or reversal of existing law and was interposed for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

293-A:7.47 Applicability to Foreign Corporations. In any derivative proceeding in the right of a foreign corporation, the matters covered by this subdivision shall be governed by the laws of the jurisdiction of incorporation of the foreign corporation except for RSA 293-A:7.43, 293-A:7.45 and 293-A:7.46.

## **Directors and Officers**

### **A. Board of Directors**

293-A:8.01 Requirement for and Duties of Board of Directors.

(a) Except as provided in RSA 293-A:7.32, each corporation shall have a board of directors.

(b) All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation or in an agreement authorized under RSA 293-A:7.32.

(c) A corporation having 50 or fewer shareholders may dispense with or limit the authority of a board of directors by describing in its articles of incorporation who will perform some or all of the duties of a board of directors.

293-A:8.02 Qualifications of Directors. The articles of incorporation or bylaws may prescribe qualifications for directors. A director need not be a resident of this state or a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe.

293-A:8.03 Number and Election of Directors.

(a) A board of directors shall consist of one or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

(b) If a board of directors has power to fix or change the number of directors, the board may increase or decrease by 30 percent or less the number of directors last approved by the shareholders, but only the shareholders may increase or decrease by more than 30 percent the number of directors last approved by the shareholders.

(c) The articles of incorporation or bylaws may establish a variable range for the size of the board of directors by fixing a minimum and maximum number of directors. If a variable range is established, the number of directors may be fixed or changed from time to time, within the minimum and maximum, by the shareholders or the board of directors. After shares are issued, only the shareholders may change the range for the size of the board or change from a fixed to a variable-range size board or vice versa.

(d) Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter, unless their terms are staggered under RSA 293-A:8.06.

293-A:8.04 Election of Directors by Certain Classes of Shareholders. If the articles of incorporation authorize dividing the shares into classes, the articles may also authorize the election of all or a specified number of directors by the holders of one or more authorized classes of shares. A class, or classes, of shares entitled to elect one or more directors is a separate voting group for purposes of the election of directors.

293-A:8.05 Terms of Directors Generally.

(a) The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

(b) The terms of all other directors expire at the next annual shareholders' meeting following their election unless their terms are staggered under RSA 293-A:8.06.

(c) A decrease in the number of directors does not shorten an incumbent director's term.

(d) The term of a director elected to fill a vacancy expires at the next shareholders' meeting at which directors are elected.

(e) Despite the expiration of a director's term, he continues to serve until his successor is elected and qualified or until there is a decrease in the number of directors.

293-A:8.06 Staggered Terms for Directors. If there are 9 or more directors, the articles of incorporation may provide for staggering their terms by dividing the total number of directors into 2 or 3 groups, with each group containing  $1/2$  or  $1/3$  of the total, as near as may be. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be chosen for a term of 2 years or 3 years, as the case may be, to succeed those whose terms expire.

293-A:8.07 Resignation of Directors.

(a) A director may resign at any time by delivering written notice to the board of directors, its chairman, or to the corporation.

(b) A resignation is effective when the notice is delivered unless the notice specifies a later effective date.

293-A:8.08 Removal of Directors by Shareholders.

(a) The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors shall be removed only for cause.

(b) If a director is elected by a voting group of shareholders, only the shareholders of that voting group shall participate in the vote to remove him.

(c) If cumulative voting is authorized, a director shall not be removed if the number of votes sufficient to elect him under cumulative voting is voted against his removal. If cumulative voting is not authorized, a director shall be removed only if the number of votes cast to remove him exceeds the number of votes cast not to remove him.

(d) A director shall be removed by the shareholders only at a meeting called for the purpose of removing him and the meeting notice shall state that the purpose, or one of the purposes, of the meeting is removal of the director.

#### 293-A:8.09 Removal of Directors by Judicial Proceeding.

(a) The superior court of the county where a corporation's principal office, or, if none in this state, its registered office, is located may remove a director of the corporation from office in a proceeding commenced either by the corporation or by its shareholders subject to the provisions of RSA 293-A:7.40 through RSA 293-A:7.47, holding at least 10 percent of the outstanding shares of any class if the court finds that:

(1) The director engaged in fraudulent or dishonest conduct, or gross abuse of authority or discretion, with respect to the corporation; and

(2) Removal is in the best interest of the corporation.

(b) The court that removes a director may bar the director from reelection for a period prescribed by the court.

(c) If shareholders commence a proceeding under subsection (a), they shall make the corporation a party defendant.

#### 293-A:8.10 Vacancy on Board.

(a) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(1) The shareholders may fill the vacancy.

(2) The board of directors may fill the vacancy.

(3) If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(b) If the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group are entitled to vote to fill the vacancy if it is filled by the shareholders.

(c) A vacancy that will occur at a specific later date by reason of a resignation effective at a later date under RSA 293-A:8.07(b) or otherwise, may be filled before the vacancy occurs, but the new director shall not take office until the vacancy occurs.

293-A:8.11 Compensation of Directors. Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

## **B. Meetings and Action of the Board**

### **293-A:8.20 Meetings and Action of the Board.**

(a) The board of directors may hold regular or special meetings in or out of this state.

(b) Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

### **293-A:8.21 Action without Meeting.**

(a) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this chapter to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by unanimous consent of all members of the board. The action shall be evidenced by one or more written consents describing the action taken, signed by each director, and included in the minutes or filed with the corporate records reflecting the action taken.

(b) Action taken under this section shall be effective when the last director signs the consent, unless the consent specifies a different effective date.

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

### **293-A:8.22 Notice of Meeting.**

(a) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.

(b) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors shall be preceded by at least 2 days' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

**293-A:8.23 Waiver of Notice.**

(a) A director may waive any notice required by this chapter, the articles of incorporation, or bylaws before or after the date and time stated in the notice. Except as provided by subsection (b), the waiver shall be in writing, signed by the director entitled to the notice, and filed with the minutes or corporate records.

(b) A director's attendance at or participation in a meeting waives any required notice to him of the meeting unless the director at the beginning of the meeting, or promptly upon his arrival, objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

**293-A:8.24 Quorum and Voting.**

(a) Unless the articles of incorporation or bylaws require a greater number, a quorum of a board of directors consists of either:

(1) A majority of the fixed number of directors if the corporation has a fixed board size.

(2) A majority of the number of directors prescribed, or if no number is prescribed the number in office immediately before the meeting begins, if the corporation has a variable-range size board.

(b) The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than 1/3 of the fixed or prescribed number of directors determined under subsection (a).

(c) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors, unless the articles of incorporation or bylaws require the vote of a greater number of directors.

(d) A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless:

(1) He objects at the beginning of the meeting, or promptly upon his arrival, to holding it or transacting business at the meeting;

(2) His dissent or abstention from the action taken is entered in the minutes of the meeting; or

(3) He delivers written notice of his dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

**293-A:8.25 Committees.**

(a) Unless the articles of incorporation or bylaws provide otherwise, a board of directors may create one or more committees and appoint members of the board of directors to serve on them. Each committee shall have 2 or more members, who serve at the pleasure of the board of directors.

(b) The creation of a committee and appointment of members to it shall be approved by the greater of:

(1) A majority of all the directors in office when the action is taken; or

(2) The number of directors required by the articles of incorporation or bylaws to take action under RSA 293-A:8.24.

(c) RSA 293-A:8.20 through 293-A:8.24, which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board of directors, apply to committees and their members as well.

(d) To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the authority of the board of directors under RSA 293-A:8.01.

(e) A committee may not, however:

(1) Authorize distributions.

(2) Approve or propose to shareholders action that this chapter requires be approved by the shareholders.

(3) Fill vacancies on the board of directors or on any of its committees.

(4) Amend articles of incorporation pursuant to RSA 293-A:10.02.

(5) Adopt, amend, or repeal bylaws.

(6) Approve a plan of merger not requiring shareholder approval.

(7) Authorize or approve reacquisition of shares, except according to a formula or method prescribed by the board of directors.

(8) Authorize or approve the issuance or sale or contract for sale of shares, or determine the designation and relative rights, preferences, and limitations of a class or series of shares, except that the board of directors may authorize a committee, or a senior executive officer of the corporation, to do so within limits specifically prescribed by the board of directors.

(f) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in RSA 293-A:8.30.

### C. Standards of Conduct

293-A:8.30 General Standards for Directors.

(a) A director shall discharge his duties as a director, including his duties as a member of a committee:

(1) In good faith.

(2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances.

(3) In a manner he reasonably believes to be in the best interests of the corporation.

(b) In discharging his duties a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(1) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented.

(2) Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence.

(3) A committee of the board of directors of which he is not a member if the director reasonably believes the committee merits confidence.

(c) A director is not acting in good faith if he has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.

(d) A director is not liable for any action taken as a director, or any failure to take any action, if he performed the duties of his office in compliance with this section.

293-A:8.31 (Reserved)

293-A:8.32 (Reserved)

293-A:8.33 Liability for Unlawful Distributions.

(a) A director who votes for or assents to a distribution made in violation of RSA 293-A:6.40 or the articles of incorporation is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating RSA 293-A:6.40 or the articles of incorporation if it is established that he did not perform his duties in compliance with RSA 293-A:8.30. In any proceeding commenced under this section, a director has all of the defenses ordinarily available to a director.

(b) A director held liable under subsection (a) for an unlawful distribution is entitled to contribution:

(1) From every other director who could be held liable under subsection (a) for the unlawful distribution; and

(2) From each shareholder for the amount the shareholder accepted knowing the distribution was made in violation of RSA 293-A:6.40 or the articles of incorporation.

(c) A proceeding under this section is barred unless it is commenced within 2 years after the date on which the effect of the distribution was measured under RSA 293-A:6.40 (e) or (g).

#### **D. Officers**

293-A:8.40 Required Officers.

(a) A corporation has the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.



(b) A duly appointed officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.

(c) The bylaws or the board of directors shall delegate to one of the officers responsibility for preparing minutes of the directors' and shareholders' meetings and for authenticating records of the corporation.

(d) The same individual may simultaneously hold more than one office in a corporation.

293-A:8.41 Duties of Officers. Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of other officers.

293-A:8.42 Standards of Conduct for Officers.

(a) An officer with discretionary authority shall discharge his duties under that authority:

(1) In good faith.

(2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances.

(3) In a manner he reasonably believes to be in the best interests of the corporation.

(b) In discharging his duties an officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(1) One or more officers or employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented.

(2) Legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence.

(c) An officer is not acting in good faith if he has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.

(d) An officer is not liable for any action taken as an officer, or any failure to take any action, if he performed the duties of his office in compliance with this section.

293-A:8.43 Resignation and Removal of Officers.

(a) An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective date. If a resignation is made effective at a later date and the corporation accepts the future effective date, its board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor does not take office until the effective date.

(b) A board of directors may remove any officer at any time with or without cause.

293-A:8.44 Contract Rights of Officers. (Reserved)

(a) The appointment of an officer does not itself create contract rights.

(b) An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

### **E. Indemnification**

293-A:8.50 Definitions. In this subdivision:

(1) "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

(2) "Director" means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. A director is considered to be serving an employee benefit plan at the corporation's request if his duties to the corporation also impose duties on, or otherwise involve services by, him to the plan or to participants in or beneficiaries of the plan. "Director" includes, unless the context requires otherwise, the estate or personal representative of a director.

(3) "Expenses" include counsel fees.

(4) "Liability" means the obligation to pay a judgment, settlement, penalty, fine, including an excise tax assessed with respect to an employee benefit plan, or reasonable expenses incurred with respect to a proceeding.

(5) "Official capacity" means:

(i) When used with respect to a director, the office of director in a corporation.

(ii) When used with respect to an individual other than a director, as contemplated in RSA 293-A:8.56, the office in a corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the corporation. "Official capacity" does not include service for any other foreign or domestic corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise.

(6) "Party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

(7) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

293-A:8.51 Authority to Indemnify.

(a) Except as provided in subsection (d), a corporation may indemnify an individual made a party to a proceeding because he is or was a director, against liability incurred in the proceeding if:

(1) He conducted himself in good faith; and

(2) He reasonably believed:

(i) In the case of conduct in his official capacity with the corporation, that his conduct was in its best interests; and

(ii) In all other cases, that his conduct was at least not opposed to its best interests; and

(3) In the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful.

(b) A director's conduct with respect to an employee benefit plan for a purpose he reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of subparagraph (a)(2)(ii).

(c) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the standard of conduct described in this section.

(d) A corporation may not indemnify a director under this section:

(1) In connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation; or

(2) In connection with any other proceeding charging improper personal benefit to him, whether or not involving action in his official capacity, in which he was adjudged liable on the basis that personal benefit was improperly received by him.

(e) Indemnification permitted under this section in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding.

293-A:8.52 Mandatory Indemnification. Unless limited by its articles of incorporation, a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which he was a party because he is or was a director of the corporation against reasonable expenses incurred by him in connection with the proceeding.

293-A:8.53 Advance for Expenses.

(a) A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:

(1) The director furnishes the corporation a written affirmation of his good faith belief that he has met the standard of conduct described in RSA 293-A:8.51;

(2) The director furnishes the corporation a written undertaking, executed personally or on his behalf, to repay the advance if it is ultimately determined that he did not meet the standard of conduct; and

(3) A determination is made that the facts then known to those making the determination would not preclude indemnification under this subdivision.

(b) The undertaking required by subparagraph (a)(2) shall be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

(c) Determinations and authorizations of payments under this section shall be made in the manner specified in RSA 293-A:8.55.

293-A:8.54 Court-Ordered Indemnification. Unless a corporation's articles of incorporation provide otherwise, a director of the corporation who is a "party" to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court after giving any notice the court considers necessary may order indemnification if it determines:

(1) The director is entitled to mandatory indemnification under RSA 293-A:8.52, in which case the court shall also order the corporation to pay the director's reasonable expenses incurred to obtain court-ordered indemnification; or

(2) The director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not he met the standard of conduct set forth in RSA 293-A:8.51 or was adjudged liable as described in RSA 293-A:8.51(d), IV, but if he was adjudged so liable his indemnification is limited to reasonable expenses incurred.

293-A:8.55 Determination and Authorization of Indemnification.

(a) A corporation may not indemnify a director under RSA 293-A:8.51, unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because he has met the standard of conduct set forth in RSA 293-A:8.51.

(b) The determination shall be made:

(1) By the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding.

(2) If a quorum cannot be obtained under subparagraph (b)(1) by majority vote of a committee duly designated by the board of directors, in which designation directors who are parties may participate, consisting solely of 2 or more directors not at the time parties to the proceeding.

(3) By special legal counsel:

(i) Selected by the board of directors or its committee in the manner prescribed in subparagraphs (b)(1) or (2).

(ii) If a quorum of the board of directors cannot be obtained under subparagraph (b)(3)(i) and a committee cannot be designated under subparagraph (b)(2), selected by majority vote of the full board of directors in which selection directors who are parties may participate.

(4) By the shareholders, but shares owned by or voted under the control of directors who are at the time parties to the proceeding may not be voted on the determination.

(c) Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subparagraph (b)(3) to select counsel.

293-A:8.56 Indemnification of Officers, Employees, and Agents. Unless a corporation's articles of incorporation provide otherwise:

(1) An officer of the corporation who is not a director is entitled to mandatory indemnification under RSA 293-A:8.52, and is entitled to apply for court-ordered indemnification under RSA 293-A:8.54, in each case to the same extent as a director.

(2) The corporation may indemnify and advance expenses under this subdivision to an employee or agent of the corporation who is not a director, to the same extent as to a director.

(3) A corporation may also indemnify and advance expenses to an officer, employee, or agent who is not a director to the extent, consistent with public policy, that may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract.

293-A:8.57 Insurance. A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation, or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by him in that capacity

or arising from his status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify him against the same liability under RSA 293-A:8.51 or 293-A:8.52.

293-A:8.58 Application of this subdivision.

(a) A provision treating a corporation's indemnification or of advance for expenses to directors that is contained in its articles of incorporation, bylaws, a resolution of its shareholders or board of directors, or in a contract or otherwise, is valid only if and to the extent the provision is consistent with this subdivision. If articles of incorporation limit indemnification or advance for expenses, indemnification and advance for expenses are valid only to the extent consistent with the articles.

(b) This subdivision does not limit a corporation's power to pay or reimburse expenses incurred by a director in connection with his appearance as a witness in a proceeding at a time when he has not been made a named defendant or respondent to the proceeding.

### **F. Director's Conflicting Interest Transactions**

293-A:8.60 Definitions. (Reserved)

293-A:8.61 Judicial Action. (Reserved)

293-A:8.62 Director's Action. (Reserved)

293-A:8.63 Shareholders' Action. (Reserved)

293-A:9.00 (Reserved)

## **Amendment of Articles of Incorporation and Bylaws**

### **A. Amendment of Articles of Incorporation**

293-A:10.01 Authority to Amend.

(a) A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation or to delete a provision not required in the articles of incorporation. Whether a provision is required or permitted in the articles of incorporation is determined as of the effective date of the amendment.

(b) A shareholder of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, dividend entitlement, or purpose or duration of the corporation.

293-A:10.02 Amendment by Board of Directors. Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles of incorporation without shareholder action:

(1) To extend the duration of the corporation if it was incorporated at a time when limited duration was required by law.

(2) To delete the names and addresses of the initial directors.

(3) To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the secretary of state.

(4) To change each issued and unissued authorized share of an outstanding class into a greater number of whole shares if the corporation has only shares of that class outstanding.

(5) To change the corporate name by substituting the word "corporation," "incorporated," "company," "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.," for a similar word or abbreviation in the name, or by adding, deleting, or changing a geographical attribution for the name.

(6) To make any other change expressly permitted by this chapter to be made without shareholder action.

293-A:10.03 Amendment by Board of Directors and Shareholders.

(a) A corporation's board of directors may propose one or more amendments to the articles of incorporation for submission to the shareholders.

(b) For the amendment to be adopted:

(1) The board of directors shall recommend the amendment to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the amendment; and

(2) The shareholders entitled to vote on the amendment shall approve the amendment as provided in subsection (e).

(c) The board of directors may condition its submission of the proposed amendment on any basis.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with RSA 293-A:7.05. The notice of meeting shall also state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

(e) Unless this chapter, the articles of incorporation, or the board of directors, acting pursuant to subsection (c) require a greater vote or a vote by voting groups, the amendment to be adopted shall be approved by:

(1) A majority of the votes entitled to be cast on the amendment by any voting group with respect to which the amendment would create dissenters' rights; and

(2) The votes required by RSA 293-A:7.25 and 293-A:7.26 by every other voting group entitled to vote on the amendment.

293-A:10.04 Voting on Amendments by Voting Groups.

(a) The holders of the outstanding shares of a class are entitled to vote as a separate voting group, if shareholder voting is otherwise required by this chapter, on a proposed amendment if the amendment would:

(1) Increase or decrease the aggregate number of authorized shares of the class.

(2) Effect an exchange or reclassification of all or part of the shares of the class into shares of another class.

(3) Effect an exchange or reclassification, or create the right of exchange, of all or part of the shares of another class into shares of the class.

(4) Change the designation, rights, preferences, or limitations of all or part of the shares of the class.

(5) Change the shares of all or part of the class into a different number of shares of the same class.

(6) Create a new class of shares having rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class.

(7) Increase the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class.

(8) Limit or deny an existing preemptive right of all or part of the shares of the class.

(9) Cancel or otherwise affect rights to distributions or dividends that have accumulated but not yet been declared on all or part of the shares of the class.

(b) If a proposed amendment would affect a series of a class of shares in one or more of the ways described in subsection (a), the shares of that series are entitled to vote as a separate voting group on the proposed amendment.

(c) If a proposed amendment that entitles 2 or more series of shares to vote as separate voting groups under this section would affect those 2 or more series in the same or a substantially similar way, the shares of all the series so affected shall vote together as a single voting group on the proposed amendment.

(d) A class or series of shares is entitled to the voting rights granted by this section although the articles of incorporation provide that the shares are nonvoting shares.

293-A:10.05 Amendment Before Issuance of Shares. If a corporation has not yet issued shares, its incorporators or board of directors may adopt one or more amendments to the corporation's articles of incorporation.



293-A:10.06 Articles of Amendment. A corporation amending its articles of incorporation shall deliver to the secretary of state for filing articles of amendment setting forth:

- (1) The name of the corporation.
- (2) The text of each amendment adopted.
- (3) If an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself.
- (4) The date of each amendment's adoption.
- (5) If an amendment was adopted by the incorporators or board of directors without shareholder action, a statement to that effect and that shareholder action was not required.
- (6) If an amendment was approved by the shareholders:
  - (i) The designation, number of outstanding shares, number of votes entitled to be cast by each voting group entitled to vote separately on the amendment, and number of votes of each voting group indisputably represented at the meeting.
  - (ii) Either the total number of votes cast for and against the amendment by each voting group entitled to vote separately on the amendment or the total number of undisputed votes cast for the amendment by each voting group and a statement that the number cast for the amendment by each voting group was sufficient for approval by that voting group.

293-A:10.07 Restated Articles of Incorporation.

- (a) A corporation's board of directors may restate its articles of incorporation at any time with or without shareholder action.
- (b) The restatement may include one or more amendments to the articles. If the restatement includes an amendment requiring shareholder approval, it shall be adopted as provided in RSA 293-A:10.03.
- (c) If the board of directors submits a restatement for shareholder action, the corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with RSA 293-A:7.05. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the proposed restatement and contain or be accompanied by a copy of the restatement that identifies any amendment or other change it would make in the articles.

(d) A corporation restating its articles of incorporation shall deliver to the secretary of state for filing articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate setting forth:

- (1) Whether the restatement contains an amendment to the articles requiring shareholder approval and, if it does not, that the board of directors adopted the restatement.

(2) If the restatement contains an amendment to the articles requiring shareholder approval, the information required by RSA 293-A:10.06.

(e) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

(f) The secretary of state may certify restated articles of incorporation, as the articles of incorporation currently in effect, without including the certificate information required by subsection (d).

**293-A:10.08 Amendment Pursuant to Reorganization.**

(a) A corporation's articles of incorporation may be amended without action by the board of directors or shareholders to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute if the articles of incorporation after amendment contain only provisions required or permitted by RSA 293-A:2.02.

(b) The individual or individuals designated by the court shall deliver to the secretary of state for filing articles of amendment setting forth:

(1) The name of the corporation.

(2) The text of each amendment approved by the court.

(3) The date of the court's order or decree approving the articles of amendment.

(4) The title of the reorganization proceeding in which the order or decree was entered.

(5) A statement that the court had jurisdiction of the proceeding under federal statute.

(c) Shareholders of a corporation undergoing reorganization do not have dissenters' rights, except as and to the extent provided in the reorganization plan.

(d) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

**293-A:10.09 Effect of Amendment.** An amendment to articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than shareholders of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

## **B. Amendment of Bylaws**

**293-A:10.20 Amendment by Board of Directors or Shareholders.**

(a) A corporation's board of directors may amend or repeal the corporation's bylaws unless:

(1) The articles of incorporation or this chapter reserve this power exclusively to the shareholders in whole or part.

(2) The shareholders in amending or repealing a particular bylaw provide expressly that the board of directors shall not amend or repeal that bylaw.

(b) A corporation's shareholders may amend or repeal the corporation's bylaws even though the bylaws may also be amended or repealed by its board of directors.

**293-A:10.21 Bylaw Increasing Quorum or Voting Requirement for Shareholders.**

(a) If authorized by the articles of incorporation, the shareholders may adopt or amend a bylaw that fixes a greater quorum or voting requirement for shareholders, or voting groups of shareholders, than is required by this chapter. The adoption or amendment of a bylaw that adds, changes, or deletes a greater quorum or voting requirement for shareholders shall meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

(b) A bylaw that fixes a greater quorum or voting requirement for shareholders under subsection (a) shall not be adopted, amended, or repealed by the board of directors.

**293-A:10.22 Bylaw Increasing Quorum or Voting Requirement for Directors.**

(a) A bylaw that fixes a greater quorum or voting requirement for the board of directors may be amended or repealed:

(1) If originally adopted by the shareholders, only by the shareholders.

(2) If originally adopted by the board of directors, either by the shareholders or by the board of directors.

(b) A bylaw adopted or amended by the shareholders that fixes a greater quorum or voting requirement for the board of directors may provide that it shall be amended or repealed only by a specified vote of either the shareholders or the board of directors.

(c) Action by the board of directors under subparagraph (a)(2) to adopt or amend a bylaw that changes the quorum or voting requirement for the board of directors shall meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

### **Merger and Share Exchange**

#### **293-A:11.01 Merger.**

(a) One or more corporations may merge into another corporation if the board of directors of each corporation adopts and its shareholders, if required by RSA 293-A:11.03, approve a plan of merger.

(b) The plan of merger shall set forth:

(1) The name of each corporation planning to merge and the name of the surviving corporation into which each other corporation plans to merge.

(2) The terms and conditions of the merger.

(3) The manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property in whole or part.

(c) The plan of merger may set forth:

(1) Amendments to the articles of incorporation of the surviving corporation.

(2) Other provisions relating to the merger.

#### **293-A:11.02 Share Exchange.**

(a) A corporation may acquire all of the outstanding shares of one or more classes or series of another corporation if the board of directors of each corporation adopts and its shareholders, if required by RSA 293-A:124, approve the exchange.

(b) The plan of exchange shall set forth:

(1) The name of the corporation whose shares will be acquired and the name of the acquiring corporation.

(2) The terms and conditions of the exchange.

(3) The manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring or any other corporation or for cash or other property in whole or part.

(c) The plan of exchange may set forth other provisions relating to the exchange.

(d) This section does not limit the power of a corporation to acquire all or part of the shares of one or more classes or series of another corporation through a voluntary exchange or otherwise.

#### **293-A:11.03 Action on Plan.**

(a) After adopting a plan of merger or share exchange, the board of directors of each corporation party to the merger, and the board of directors of the corporation whose shares will be acquired in the share exchange, shall submit the plan of merger, except as provided in subsection (g), or share exchange for approval by its shareholders.

(b) For a plan of merger or share exchange to be approved:

(1) The board of directors shall recommend the plan of merger or share exchange to the shareholders, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the plan; and

(2) The shareholders entitled to vote shall approve the plan.

(c) The board of directors may condition its submission of the proposed merger or share exchange on any basis.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with RSA 293-A:7.05. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger or share exchange and contain or be accompanied by a copy or summary of the plan.

(e) Unless this chapter, the articles of incorporation, or the board of directors, acting pursuant to subsection (c) require a greater vote or a vote by voting groups, the plan of merger or share exchange to be authorized shall be approved by each voting group entitled to vote separately on the plan by a majority of all the votes entitled to be cast on the plan by that voting group.

(f) Separate voting by voting groups is required:

(1) On a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation, would require action by one or more separate voting groups on the proposed amendment under RSA 293-A:10.04.

(2) On a plan of share exchange by each class or series to shares included in the exchange, with each class or series constituting a separate voting group.

(g) Action by the shareholders of the surviving corporation on a plan of merger is not required if:

(1) The articles of incorporation of the surviving corporation will not differ, except for amendments enumerated in RSA 293-A:10.02, from its articles before the merger.

(2) Each shareholder of the surviving corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical designations, preferences, limitations, and relative rights, immediately after:

(3) The number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to

the merger, will not exceed by more than 20 percent the total number of voting shares of the surviving corporation outstanding immediately before the merger.

(4) The number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrant issued pursuant to the merger, will not exceed by more than 20 percent the total number of participating shares outstanding immediately before the merger.

(h) As used in subsection (g):

(1) "Participating shares" means shares that entitle their holders to participate without limitation in distributions.

(2) "Voting shares" means shares that entitle their holders to vote unconditionally in elections of directors.

(i) After a merger or share exchange is authorized, and at any time before articles of merger or share exchange are filed, the planned merger or share exchange may be abandoned, subject to any contractual rights, without further shareholder action, in accordance with the procedure set forth in the plan of merger or share exchange or, if none is set forth, in the manner determined by the board of directors.

#### 293-A:11.04 Merger of Subsidiary. -

(a) A parent corporation owning at least 90 percent of the outstanding shares of each class of a subsidiary corporation may merge the subsidiary into itself without approval of the shareholders of the parent or subsidiary.

(b) The board of directors of the parent shall adopt a plan of merger that sets forth:

(1) The names of the parent and subsidiary.

(2) The manner and basis of converting the shares of the subsidiary into shares, obligations, or other securities of the parent or any other corporation or into cash or other property in whole or part.

(c) The parent shall mail a copy or summary of the plan of merger to each shareholder of the subsidiary who does not waive the mailing requirement in writing.

(d) The parent shall not deliver articles of merger to the secretary of state for filing until at least 30 days after the date it mailed a copy of the plan of merger to each shareholder of the subsidiary who did not waive the mailing requirement.

(e) Articles of merger under this section shall not contain amendments the articles of incorporation of the parent corporation, except for amendments enumerated in RSA 293-A:10.02.

## 293-A:11.05 Articles of Merger or Share Exchange.

(a) After a plan of merger or share exchange is approved by the shareholders, or adopted by the board of directors if shareholder approval is not required, the surviving or acquiring corporation shall deliver to the secretary of state for filing articles of merger or share exchange setting forth:

(1) The plan of merger or share exchange.

(2) If shareholder approval was not required, a statement to that effect.

(3) If approval of the shareholders of one or more corporations party to the merger or share exchange was required:

(i) The designation, number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on the plan as to each corporation; and

(ii) Either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group.

(b) A merger or share exchange takes effect upon the effective date of the articles of merger or share exchange.

## 293-A:11.06 Effect of Merger or Share Exchange.

(a) When a merger takes effect:

(1) Every other corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases.

(2) The title to all real estate and other property owned by each corporation party to the merger is vested in the surviving corporation without reversion or impairment.

(3) The surviving corporation has all liabilities of each corporation party to the merger.

(4) A proceeding pending against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased.

(5) The articles of incorporation of the surviving corporation are amended to the extent provided in the plan of merger.

(6) The shares of each corporation party to the merger that are to be converted into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property are converted, and the former holders of the shares are entitled only to the rights provided in the articles of merger or to their rights under RSA 293-A:13.01 through 293-A:13.31.

(b) When a share exchange takes effect, the shares of each acquired corporation are exchanged as provided in the plan, and the former holders of the shares are entitled only to the exchange rights provided in the articles of share exchange or to their rights under RSA 293-A:13.01 through RSA 293-A:13.31.

293-A:11.07 Merger or Share Exchange with Foreign Corporation.

(a) One or more foreign corporations may merge or enter into a share exchange with one or more domestic corporations if:

(1) In a merger, the merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger.

(2) In a share exchange, the corporation whose shares will be acquired is a domestic corporation, whether or not a share exchange is permitted by the law of the state or country under whose law the acquiring corporation is incorporated.

(3) The foreign corporation complies with RSA 293-A:11.05 if it is the surviving corporation of the merger or acquiring corporation of the share exchange.

(4) Each domestic corporation complies with the applicable provisions of RSA 293-A:11.01 through 293-A:11.04 and, if it is the surviving corporation of the merger or acquiring corporation of the share exchange, with RSA 293-A:11.05.

(b) Upon the merger or share exchange taking effect, the surviving foreign corporation of a merger and the acquiring foreign corporation of a share exchange is deemed:

(1) To appoint the secretary of state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation party to the merger or share exchanges; and

(2) To agree that it will promptly pay to the dissenting shareholders of each domestic corporation party to the merger or share exchange the amount, if any, to which they are entitled under RSA 293-A:13.01 through 293-A:13.31.

(c) This section does not limit the power of a foreign corporation to acquire all or part of the shares of one or more classes or series of a domestic corporation through a voluntary exchange or otherwise.

### **Sale of Assets**

293-A:12.01 Sale of Assets in Regular Course of Business and Mortgage of Assets.

(a) A corporation, on the terms and conditions and for the consideration determined by the board of directors, may:



(1) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property in the usual and regular course of business.

(2) Mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of its property whether or not in the usual and regular course of business.

(3) Transfer any or all of its property to a corporation all the shares of which are owned by the corporation.

(b) Unless the articles of incorporation require it, approval by the shareholders of a transaction described in subsection (a) is not required.

293-A:12.02 Sale of Assets Other Than in Regular Course of Business.

(a) A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property, with or without the good will, otherwise than in the usual and regular course of business, on the terms and conditions and for the consideration determined by the corporation's board of directors, if the board of directors proposes and its shareholders approve the proposed transaction.

(b) For a transaction to be authorized:

(1) The board of directors shall recommend the proposed transaction to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the submission of the proposed transaction; and

(2) The shareholders entitled to vote shall approve the transaction.

(c) The board of directors may condition its submission of the proposed transaction on any basis.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with RSA 293-A:7.05. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, the property of the corporation and contain or be accompanied by a description of the transaction.

(e) Unless the articles of incorporation or the board of directors, acting pursuant to subsection (c) require a greater vote or a vote by voting groups, the transaction to be authorized shall be approved by a majority of all the votes entitled to be cast on the transaction.

(f) After a sale, lease, exchange, or other disposition of property is authorized, the transaction may be abandoned, subject to any contractual rights, without further shareholder action.

(g) A transaction that constitutes a distribution is governed by RSA 293-A:6.40 and not by this section.

### **Dissenters' Rights**

#### **A. Right to Dissent and Obtain Payment for Shares**

293-A:13.01 Definitions. In this subdivision:

(1) "Corporation" means the issuer of the shares held by a dissenter before the corporate action, or the surviving or acquiring corporation by merger or share exchange of that issuer.

(2) "Dissenter" means a shareholder who is entitled to dissent from corporate action under RSA 293-A:13.02 and who exercises that right when and in the manner required by RSA 293-A:13.20 through 293-A:13.28.

(3) "Fair value," with respect to a dissenter's shares, means the value of the shares immediately before the effectuation of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action, unless exclusion would be inequitable.

(4) "Interest" means interest from the effective date of the corporate action until the date of payment, at the average rate currently paid by the corporation on its principal bank loans or, if none, at a rate that is fair and equitable under all the circumstances.

(5) "Record shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(6) "Beneficial shareholder" means the person who is a beneficial owner of shares held in a voting trust or by a nominee as the record shareholder.

(7) "Shareholder" means the record shareholder or the beneficial shareholder.

293-A:13.02 Right to Dissent.

(a) A shareholder is entitled to dissent from, and obtain payment of the fair value of his shares in the event of, any of the following corporate actions:

(1) Consummation of a plan of merger to which the corporation is a party:

(i) If shareholder approval is required for the merger by RSA 293-A:11.03 or the articles of incorporation and the shareholder is entitled to vote on the merger; or

(ii) If the corporation is a subsidiary that is merged with its parent under RSA 293-A:11.04.

(2) Consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the plan.

(3) Consummation of a sale or exchange of all, or substantially all, of the property of the corporation other than in the usual and regular course of business, if the shareholder is entitled to vote on the sale or exchange, including a sale in dissolution, but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within one year after the date of sale.

(4) An amendment of the articles of incorporation that materially and adversely affects rights in respect of a dissenter's shares because it:

(i) Alters or abolishes a preferential right of the shares

(ii) Creates, alters, or abolishes a right in respect of redemption, including a provision respecting a sinking fund for the redemption or repurchase, of the shares.

(iii) Alters or abolishes a preemptive right of the holder of the shares to acquire shares or other securities.

(iv) Excludes or limits the right of the shares to vote on any matter, or to cumulate votes, other than a limitation by dilution through issuance of shares or other securities with similar voting rights.

(v) Reduces the number of shares owned by the shareholder to a fraction of a share if the fractional share so created is to be acquired for cash under RSA 293-A:6.04.

(5) Any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares.

(b) A shareholder entitled to dissent and obtain payment for his shares under this subdivision shall not challenge the corporate action creating his entitlement, unless the action is unlawful or fraudulent with respect to the shareholder or the corporation.

#### 293-A:13.03 Dissent by Nominees and Beneficial Owners.

(a) A record shareholder may assert dissenters' rights as to fewer than all the shares registered in his name only if he dissents with respect to all shares beneficially owned by any one person and notifies the corporation in writing of the name and address of each person on whose behalf he asserts dissenters' rights. The rights of a partial dissenter under this subsection are determined as if the shares as to which he dissents and his other shares were registered in the names of different shareholders.

(b) A beneficial shareholder may assert dissenters' rights as to shares held on his behalf only if:

(1) He submits to the corporation the record shareholder's

written consent to the dissent not later than the time the beneficial shareholder asserts dissenters' rights; and

(2) He does so with respect to all shares of which he is the beneficial shareholder or over which he has power to direct the vote.

### **B. Procedure for Exercise of Dissenters' Rights**

#### **293-A:13.20 Notice of Dissenters' Rights.**

(a) If proposed corporate action creating dissenters' rights under RSA 293-A:13.02 is submitted to a vote at a shareholders' meeting, the meeting notice shall state that shareholders are or may be entitled to assert dissenters' rights under this subdivision and be accompanied by a copy of this subdivision.

(b) If corporate action creating dissenters' rights under RSA 293-A:13.02 is taken without a vote of shareholders or by consent pursuant to RSA 293-A:7.04, the corporation shall notify in writing all shareholders entitled to assert dissenters' rights that the action was taken and send them the dissenters' notice described in RSA 293-A:13.22.

#### **293-A:13.21 Notice of Intent to Demand Payment.**

(a) If proposed corporate action creating dissenters' rights under RSA 293-A:13.02 is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert dissenters' rights:

(1) Shall deliver to the corporation before the vote is taken written notice of his intent to demand payment for his shares if the proposed action is effectuated; and

(2) Shall not vote his shares in favor of the proposed action.

(b) A shareholder who does not satisfy the requirements of subsection (a) is not entitled to payment for his shares under this subdivision.

#### **293-A:13.22 Dissenters' Notice.**

I. If proposed corporate action creating dissenters' rights under RSA 293-A:13.02 is authorized at a shareholders' meeting, the corporation shall deliver a written dissenters' notice to all shareholders who satisfied the requirements of RSA 293-A:13.21.

(b) The dissenters' notice shall be sent no later than 10 days after corporate action was taken, and shall:

(1) State where the payment demand shall be sent and where and when certificates for certificated shares shall be deposited.

(2) Inform holders of uncertificated shares to what extent transfer of the shares will be restricted after the payment demand is received.

(3) Supply a form for demanding payment that includes the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action and requires that the

person asserting dissenters' rights certify whether or not the acquired beneficial ownership of the shares before that date.

(4) Set a date by which the corporation shall receive the payment demand, which date shall not be fewer than 30 nor more than 60 days after the date the notice is delivered.

(5) Be accompanied by a copy of this subdivision.

**293-A:13.23 Duty to Demand Payment.**

(a) A shareholder sent a dissenters' notice described in RSA 293-A:13.22 shall demand payment, certify whether he acquired beneficial ownership of the shares before the date required to be set forth, in the dissenter's notice pursuant to RSA 293-A:13.22 (b)(3), and deposit his certificates in accordance with the terms of the notice.

(b) The shareholder who demands payment and deposits his share certificates under subsection (a) retains all other rights of a shareholder until these rights are cancelled or modified by the taking of the proposed corporate action.

(c) A shareholder who does not demand payment or deposit his share certificates where required, each by the date set in the dissenters' notice, is not entitled to payment for his shares under this subdivision.

**293-A:13.24 Share Restrictions.**

(a) The corporation may restrict the transfer of uncertificated shares from the date the demand for their payment is received until the proposed corporate action is taken or the restrictions released under RSA 293-A:13.26.

(b) The person for whom dissenters' rights are asserted as to uncertificated shares retains all other rights of a shareholder until these rights are cancelled or modified by the taking of the proposed corporate action.

**293-A:13.25 Payment.**

(a) Except as provided in RSA 293-A:13.27, as soon as the proposed corporate action is taken, or upon receipt of a payment demand, the corporation shall pay each dissenter who complied with RSA 293-A:13.23 the amount the corporation estimates to be the fair value of his shares, plus accrued interest.

(b) The payment shall be accompanied by:

(1) The corporation's balance sheet as of the end of a fiscal year ending not more than 16 months before the date of payment, an income statement for that year; a statement of changes in shareholders' equity for that year; and the latest available interim financial statements, if any;

(2) A statement of the corporation's estimate of the fair value of the shares;

(3) An explanation of how the interest was calculated;

(4) A statement of the dissenter's right to demand payment under RSA 293-A:13.28; and

(5) A copy of this subdivision.

**293-A:13.26 Failure to Take Action.**

(a) If the corporation does not take the proposed action within 60 days after the date set for demanding payment and depositing share certificates, the corporation shall return the deposited certificates and release the transfer restrictions imposed on uncertificated shares.

(b) If after returning deposited certificates and releasing transfer restrictions, the corporation takes the proposed action, it shall send a new dissenters' notice under RSA 293-A:13.22 and repeat the payment demand procedure.

**293-A:13.27 After-Acquired Shares.**

(a) A corporation may elect to withhold payment required by RSA 293-A:13.25 from a dissenter, unless he was the beneficial owner of the shares before the date set forth in the dissenters' notice as the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action.

(b) To the extent the corporation elects to withhold payment under subsection (a), after taking the proposed corporate action, it shall estimate the fair value of the shares, plus accrued interest, and shall pay this amount to each dissenter who agrees to accept it in full satisfaction of his demand. The corporation shall send with its offer a statement of its estimate of the fair value of the shares, an explanation of how the interest was calculated, and a statement of the dissenter's right to demand payment under RSA 293-A:13.28.

**293-A:13.28 Procedure if Shareholder Dissatisfied With Payment or Offer.**

I. A dissenter may notify the corporation in writing of his own estimate of the fair value of his shares and amount of interest due, and demand payment of his estimate, less any payment under RSA 293-A:13.25, or reject the corporation's offer under RSA 293-A:13.27 and demand payment of the fair value of his shares and interest due, if:

(1) The dissenter believes that the amount paid under RSA 293-A:13.25 or offered under RSA 293-A:13.27 is less than the fair value of his shares or that the interest due is incorrectly calculated;

(2) The corporation fails to make payment under RSA 293-A:13.25 within 60 days after the date set for demanding payment; or

(3) The corporation, having failed to take the proposed action, does not return the deposited certificates or release the transfer restrictions imposed on uncertificated shares within 60 days after the date set for demanding payment.

(b) A dissenter waives his right to demand payment under this section unless he notifies the corporation of his demand in writing under subsection (a) within 30 days after the corporation made or offered payment for his shares.

### **C. Judicial Appraisal of Shares**

#### **293-A:13.30 Court Action.**

(a) If a demand for payment under RSA 293-A:13.28 remains unsettled, the corporation shall commence a proceeding within 60 days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the 60-day period, it shall pay each dissenter whose demand remains unsettled the amount demanded.

(b) The corporation shall commence the proceeding in the superior court of the county where a corporation's principal office, or, if none in this state, its registered office, is located. If the corporation is a foreign corporation without a registered office in this state, it shall commence the proceeding in the county in this state where the registered office of the domestic corporation merged with or whose shares were acquired by the foreign corporation was located.

(c) The corporation shall make all dissenters, whether or not residents of this state, whose demands remain unsettled parties to the proceeding as in an action against their shares and all parties shall be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(d) The jurisdiction of the court in which the proceeding is commenced under subsection (b) is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decisions on the question of their value. The appraisers have the powers described in the order appointing them, or in any amendment to it. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

(e) Each dissenter made a party to the proceeding is entitled to judgment:

(1) For the amount, if any, by which the court finds the fair value of his shares, plus interest, exceeds the amount paid by the corporation; or,

(2) For the fair value, plus accrued interest, of his after-acquired shares for which the corporation elected to withhold payment under RSA 293-A:13.27.

#### **293-A:13.31 Court Costs and Counsel Fees.**

(a) The court in an appraisal proceeding commenced under RSA 293-A:13.30 shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by

the court. The court shall assess the costs against the corporation, except that the court may assess costs against all or some of the dissenters, in amounts the court finds equitable, to the extent the court finds the dissenters acted arbitrarily, vexatiously, or not in good faith in demanding payment under RSA 293-A:13.28.

(b) The court may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

(1) Against the corporation and in favor of any or all dissenters if the court finds the corporation did not substantially comply with the requirements of RSA 293-A:13.20 through RSA 293-A:13.28.

(2) Against either the corporation or a dissenter, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this subdivision.

(c) If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated, and that the fees for those services should not be assessed against the corporation, the court may award to these counsel reasonable fees to be paid out of the amounts awarded the dissenters who were benefited.

## **Dissolution**

### **A. Voluntary Dissolution**

293-A:14.01 Dissolution by Incorporators or Initial Directors. A majority of the incorporators or initial directors of a corporation that has not issued shares or has not commenced business may dissolve the corporation by delivering to the secretary of state for filing articles of dissolution that set forth:

(1) The name of the corporation.

(2) The date of its incorporation.

(3) Either:

(i) That none of the corporation's shares has been issued; or

(ii) That the corporation has not commenced business.

(4) That no debt of the corporation remains unpaid.

(5) That the net assets of the corporation remaining after winding up have been distributed to the shareholders, if shares were issued.

(6) That a majority of the incorporators or initial directors authorized the dissolution.

293-A:14.02 Dissolution by Board of Directors and Shareholders.

(a) A corporation's board of directors may propose dissolution for submission to the shareholders.



(b) For a proposal to dissolve to be adopted:

(1) The board of directors shall recommend dissolution to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders; and

(2) The shareholders entitled to vote shall approve the proposal to dissolve as provided in subsection (e).

(c) The board of directors may condition its submission of the proposal for dissolution on any basis.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with RSA 293-A:7.05. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.

(e) Unless the articles of incorporation or the board of directors acting pursuant to subsection (c) require a greater vote or a vote by voting groups, the proposal to dissolve to be adopted shall be approved by a majority of all the votes entitled to be cast on that proposal.

#### 293-A:14.03 Articles of Dissolution.

(a) At any time after dissolution is authorized, the corporation may dissolve by delivering to the secretary of state for filing a statement from the New Hampshire department of revenue administration that all taxes due from or accrued by the corporation through the date of the articles of dissolution have been either assessed and paid or adequately provided for in a manner acceptable to the department, and articles of dissolution setting forth:

(1) The name of the corporation.

(2) The date dissolution was authorized.

(3) If dissolution was approved by the shareholders:

(i) The number of votes entitled to be cast on the proposal to dissolve; and

(ii) Either the total number of votes cast for and against dissolution or the total number of undisputed votes cast for dissolution and a statement that the number cast for dissolution was sufficient for approval.

(4) If voting by voting groups was required, the information required by subparagraph (a)(3) shall be separately provided for each voting group entitled to vote separately on the plan to dissolve.

(b) A corporation is dissolved upon the effective date of its articles of dissolution.

#### 293-A:14.04 Revocation of Dissolution.

(a) A corporation may revoke its dissolution within 120 days of its effective date.

(b) Revocation of dissolution shall be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action.

(c) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the secretary of state for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

(1) The name of the corporation.

(2) The effective date of the dissolution that was revoked.

(3) The date that the revocation of dissolution was authorized.

(4) If the corporation's board of directors, or incorporators, revoked the dissolution, a statement to that effect.

(5) If the corporation's board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization.

(6) If shareholder action was required to revoke the dissolution, the information required by RSA 293-A:14.03(a)(3) or (4).

(d) Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

(e) When the revocation of dissolution is effective, it reverts back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its business as if dissolution had never occurred.

#### 293-A:14.05 Effect of Dissolution.

(a) A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

(1) Collecting its assets.

(2) Disposing of its properties that will not be distributed in kind to its shareholders.

(3) Discharging or making provision for discharging its liabilities.

(4) Distributing its remaining property among its shareholders according to their interests.

(5) Doing every other act necessary to wind up and liquidate its business and affairs.

(b) Dissolution of a corporation does not:

(1) Transfer title to the corporation's property.

(2) Prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records.

(3) Subject its directors or officers to standards of conduct different from those prescribed in RSA 293-A:8.01 through 293-A:8.58.

(4) Change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws.

(5) Prevent commencement of a proceeding by or against the corporation in its corporate name.

(6) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution.

(7) Terminate the authority of the registered agent of the corporation.

#### 293-A:14.06 Known Claims Against Dissolved Corporation.

(a) A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

(b) The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice shall:

(1) Describe information that shall be included in a claim;

(2) Provide a mailing address where a claim may be sent.

(3) State the deadline, which may not be fewer than 120 days from the effective date of the written notice, by which the dissolved corporation shall receive the claim; and

(4) State that the claim will be barred if not received by the deadline.

(c) A claim against the dissolved corporation is barred:

(1) If a claimant who was given written notice under subsection (b) does not deliver the claim to the dissolved corporation by the deadline.

(2) If a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within 90 days after the effective date of the rejection notice.

(d) For purposes of this section, "claim" shall not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

#### 293-A:14.07 Unknown Claims Against Dissolved Corporation.

(a) A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.

(b) The notice shall:

(1) Be published one time in a newspaper of general circulation in the county where the dissolved corporation's principal office, or, if none in this state, its registered office, is or was last located;

(2) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(3) State that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within 5 years after the publication of the notice.

(c) If the dissolved corporation publishes a newspaper notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within 5 years after the publication date of the newspaper notice:

(1) A claimant who did not receive written notice under RSA 293-A:14.06;

(2) A claimant whose claim was timely sent to the dissolved corporation but not acted on;

(3) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(d) A claim may be enforced under this section:

(1) Against the dissolved corporation, to the extent of its undistributed assets; or

(2) If the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of his pro rata share of the claim or the corporate assets distributed to him in liquidation, whichever is less, but a shareholder's total liability for all claims under this section shall not exceed the total amount of assets distributed to him.

### **B. Administrative Dissolution**

293-A:14.20 Grounds for Administrative Dissolution. The secretary of state may administratively dissolve a corporation under RSA 293-A:14.21 if:

(1) The corporation for 2 consecutive years does not pay within 60 days after they are due any franchise taxes or penalties imposed by this chapter or other law;

(2) The corporation for 2 consecutive years does not deliver its annual report to the secretary of state within 60 days after it is due;

(3) The corporation is without a registered agent or registered office in this state for 60 days or more;

(4) The corporation does not notify the secretary of state within 60 days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued; or

(5) The corporation's period of duration stated in its articles of incorporation expires.

293-A:14.21 Procedure for and Effect of Administrative Dissolution.

(a) If the secretary of state determines that one or more grounds exist under RSA 293-A:14.20 for dissolving a corporation, he shall

administratively dissolve the corporation by signing and mailing a notice of dissolution to the corporation at its principal address that recites the ground or grounds for dissolution and its effective date, together with an application for re-instatement.

(b) A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under RSA 293-A:14.05 and notify claimants under RSA 293-A:14.06 and 293-A:14.07.

(c) The administrative dissolution of a corporation shall not terminate the authority of its registered agent.

(d) The secretary of state shall not permit any other individual, corporation, or other business entity to assume the same name or a deceptively similar name, of a corporation administratively dissolved under this section, or any trade name registered by such corporation pursuant to RSA 349, for a period of 120 days following the notice of administrative dissolution without the written consent of such corporation.

#### 293-A:14.22 Reinstatement Following Administrative Dissolution.

(a) A corporation administratively dissolved under RSA 293-A:14.21 may apply to the secretary of state for reinstatement within 3 years after the effective date of dissolution. The application shall:

(1) Recite the name of the corporation and the effective date of its administrative dissolution;

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(3) State that the corporation's name or proposed name satisfies the requirements of RSA 293-A:4.01; and

(4) Contain a certificate from the department of revenue administration reciting that all taxes owed by the corporation have been paid, if such application is received by the secretary of state more than 120 days after the notice of administrative dissolution is mailed.

(b) If the secretary of state determines that the application contains the information required by subsection (a), that the information is correct, and that the corporation name is available for registration, he shall cancel the notice of dissolution and prepare a notice of reinstatement that recites his determination and the effective date of reinstatement and mail said notice to the corporation. If the application for reinstatement included a change of name of the corporation, said notice shall set forth the change of name of the corporation, and said notice shall constitute an amendment to the articles of incorporation.

(c) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred.

293-A:14.23 Appeal From Denial of Reinstatement.

(a) If the secretary of state denies a corporation's application for reinstatement following administrative dissolution, he shall mail the corporation a written notice that explains the reason or reasons for denial.

(b) The corporation may appeal the denial of reinstatement to the superior court within 30 days after service of the notice of denial is perfected. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of dissolution, the corporation's application for reinstatement, and the secretary of state's notice of denial.

(c) The court may summarily order the secretary of state to reinstate the dissolved corporation or may take other action the court considers appropriate.

(d) The court's final decision may be appealed as in other civil proceedings.

### C. Judicial Dissolution

293-A:14.30 Grounds for Judicial Dissolution. The superior court may dissolve a corporation:

(a) In a proceeding by the attorney general if it is established that:

(i) The corporation obtained its articles of incorporation through fraud; or

(ii) The corporation has continued to exceed or abuse the authority conferred upon it by law.

(b) In a proceeding by a shareholder if it is established that:

(i) The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock.

(ii) The shareholders are deadlocked in voting power and have failed, for a period that includes at least 2 consecutive annual meeting dates, to elect successors to directors whose terms have expired.

(3) In a proceeding by a creditor if it is established that:

(i) The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or

(ii) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent.

(4) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

**293-A:14.31 Procedure for Judicial Dissolution.**

(a) Venue for a proceeding by the attorney general to dissolve a corporation lies in Merrimack county. Venue for a proceeding brought by any other party named in RSA 293-A:14.30 lies in the county where a corporation's principal office, or, if none in this state, its registered office, is or was last located.

(b) It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(c) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

(d) Within 10 days of the commencement of a proceeding under RSA 293-A:14.30(2), to dissolve a corporation that has no shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national securities exchange, the corporation shall send to all shareholders, other than the petitioner, a notice stating that the shareholders are entitled to avoid the dissolution of the corporation by electing to purchase the petitioner's shares under RSA 293-A:14.34 and accompanied by a copy of RSA 293-A:14.34.

**293-A:14.32 Receivership or Custodianship.**

(a) A court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of its property wherever located.

(b) The court may appoint an individual or a domestic or foreign corporation, authorized to transact business in this state, as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(c) The court shall describe the powers and of the receiver or custodian in its appointing order; which may be amended from time to time. Among other powers:

(1) The receiver:

(i) May dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court;

(ii) May sue and defend his own name as receiver of the corporation in all courts of this state.

(2) The custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

(d) The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the corporation, its shareholders, and creditors.

(e) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and his counsel from the assets of the corporation or proceeds from the sale of the assets.

#### 293-A:14.33 Decree of Dissolution.

(a) If after a hearing the court determines that one or more grounds for judicial dissolution described in RSA 293-A:14.30 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the secretary of state, who shall file it.

(b) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with RSA 293-A:14.05 and the notification of claimants in accordance with RSA 293-A:14.06 and 293-A:14.07.

#### 293-A:14.34 Election to Purchase in Lieu of Dissolution.

(a) In a proceeding under RSA 293-A:14.30(b) to dissolve a corporation that has no shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association, the corporation may elect or, if it fails to elect one or more shareholders may elect to purchase all shares owned by the petitioning shareholder at the fair value of the shares. An election pursuant to this section shall be irrevocable, unless the court determines that it is equitable to set aside or modify the election.

(b) An election to purchase pursuant to this section may be filed with the court at any time within 90 days after the filing of the petition under RSA 293-A:14.30(2) or at such later time as the court in its discretion may allow. If the election to purchase is filed by one or more shareholders, the corporation shall, within 10 days thereafter, give written notice to all shareholders other than the petitioner.



The notice shall state the name and number of shares owned by the petitioner and the name and number of shares owned by each electing shareholder and shall advise the recipients of their right to join in the election to purchase shares in accordance with this section. Shareholders who wish to participate shall file notice of their intention to join in the purchase no later than 30 days after the effective date of the notice to them. All shareholders who have filed an election or notice of their intention to participate in the election to purchase thereby become parties to ownership of shares as of the date the first election was filed, unless they otherwise agree or the court otherwise directs. After an election has been filed by the corporation or one or more shareholders the proceeding under RSA 293-A:14.30(2) shall not be discontinued or settled, nor may the petitioning shareholder sell or otherwise dispose of his shares, unless the court determines that it would be equitable to the corporation and the shareholders other than the petitioner to permit such discontinuance, settlement, sale, or other disposition.

(c) If, within 60 days of the filing of the first election, the parties reach agreement as to the fair value and terms of purchase of the petitioner's shares, the court shall enter an order directing the purchase of petitioner's shares upon the terms and conditions agreed to by the parties.

(d) If the parties are unable to reach an agreement as provided for in subsection (c), the court, upon application of any party, shall stay the RSA 293-A:14.30(2) proceedings and determine the fair value of the petitioner's shares as of the day before the date on which the petition under RSA 293-A:14.30(2) was filed or as of such other date as the court deems appropriate under the circumstances.

(c) Upon determining the fair value of the shares, the court shall enter an order directing the purchase upon such terms and conditions as the court deems appropriate, which may include payment of the purchase price in installments, where necessary in the interests of equity, provision for security to assure payment of the purchase price and any additional costs, fees, and expenses as may have been awarded, and, if the shares are to be purchased by shareholders, the allocation of shares among them. In allocating petitioner's shares among holders of different classes of shares, the court shall attempt to preserve the existing distribution of voting rights among holders of different classes insofar as practicable and may direct that holders of a specific class or classes shall not participate in the purchase. Interest may be allowed at the rate and from the date determined by the court to be equitable, but if the court finds that the refusal of the petitioning shareholder to accept an offer of payment was arbitrary or otherwise not in good faith, no interest shall be allowed.

(f) Upon entry of an order under subsections (c) or (e), the court shall dismiss the petition to dissolve the corporation under RSA 293-A:14.30, and the petitioning shareholder shall no longer have any rights or status as a shareholder of the corporation, except the right to receive the amounts awarded to him by the order of the court which shall be enforceable in the same manner as any other judgment.

(g) The purchase ordered pursuant to subsection (e), shall be made within 10 days after the date the order becomes final, unless before that time the corporation files with the court a notice of its intention to adopt articles of dissolution pursuant to RSA 293-A:14.02 and RSA 293-A:14.03, which articles shall then be adopted and filed within 50 days thereafter. Upon filing of such articles of dissolution, the corporation shall be dissolved in accordance with the provisions of RSA 293-A:14.05 through 293-A:14.07 and the order entered pursuant to subsection (e) shall no longer be of any force or effect, except that the court may award the petitioning shareholder reasonable fees and expenses in accordance with the provisions of the last sentence of subsection (e) and the petitioner may continue to pursue any claims previously asserted on behalf of the corporation.

(h) Any payment by the corporation pursuant to an order under subsections (c) or (e), other than an award of fees and expenses pursuant to subsection (e) is subject to the provisions of RSA 293-A:6.40.

#### **D. Miscellaneous**

293-A:14.40 Deposit with State Treasurer. Assets of a dissolved corporation that should be transferred to a creditor, claimant, or shareholder of the corporation who cannot be found or who is not competent to receive them shall be reduced to cash and deposited with the state treasurer or other appropriate state official for safe-keeping. When the creditor, claimant, or shareholder furnishes satisfactory proof of entitlement to the amount deposited, the state treasurer or other appropriate state official shall pay him or his representative that amount.

#### **A. Foreign Corporations Certificate of Authority**

293-A:15.01 Authority to Transact Business Required.

(a) A foreign corporation shall not transact business in this state until it obtains a certificate of authority from the secretary of state.

(b) The following activities, among others, do not constitute transacting business within the meaning of subsection (a):

(1) Maintaining, defending, or settling any proceeding.

(2) Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs.

(3) Maintaining bank accounts.

(4) Maintaining offices or agencies for the transfer, exchange, or registration of the corporation's own securities or maintaining trustees or depositaries with respect to those securities.

(5) Selling through independent contractors.

(6) Soliciting or obtaining order, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts.

(7) Creating or acquiring indebtedness, mortgages, and security interests in real or personal property.

(8) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts.

(9) Owning, without more real or personal property.

(10) Conducting an isolated transaction that is completed within 30 days and that is not one in the course of repeated transactions of a like nature.

(11) Transacting business in interstate commerce.

(c) The list of activities in subsection (b) is not exhaustive.

(d) Any so-called Massachusetts trust or business trust established by law of any other state, desiring to do business in this state, shall be deemed to be a foreign corporation and shall be required to register under and comply with the provisions of this chapter.

293-A:15.02 Consequences of Transacting Business without Authority.

(a) A foreign corporation transacting business in this state without a certificate of authority shall not maintain a proceeding in any court in this state until it obtains a certificate of authority.

(b) The successor to a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business shall not maintain a proceeding based on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.

(c) A court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

(d) A foreign corporation which transacts business in this state without a certificate of authority shall be liable to this state, for the years or parts of any years during which it transacted business in this state without a certificate of authority, in an amount equal to all fees and franchise fees which would have been imposed by this sub-

division upon the corporation had it duly applied for and received a certificate of authority to transact business in this state as required by this subdivision and thereafter filed all required reports. The corporation shall also be liable for any penalties imposed by this subdivision for failure to pay such fees and franchise fees. The attorney general shall bring proceedings to recover all amounts due under the provisions of this section.

(e) Notwithstanding subsections (a) and (b), the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this state.

#### 293-A:15.03 Application for Certificate of Authority.

(a) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application shall set forth:

(1) The name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of RSA 293-A:15.06.

(2) The name of the state or country under whose law it is incorporated.

(3) Its date of incorporation and period of duration.

(4) The street address of its principal office.

(5) The address of its registered office in this state and the name of its registered agent at that office.

(6) The names and usual business addresses of its current directors and officers.

(b) The foreign corporation shall deliver with the completed application a certificate of existence, or document of similar import, duly authorized by the secretary of state or other official having custody of corporate records in the state or country under whose law it is incorporated, not issued more than 60 days before the application is received by the secretary of state.

#### 293-A:15.04 Amended Certificate of Authority.

(a) A foreign corporation authorized to transact business in this state shall obtain an amended certificate of authority from the secretary of state if it changes:

(1) Its corporate name.

(2) The period of its duration.

(3) The state or country of its incorporation.

(b) The requirements of RSA 293-A:15.03 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

**293-A:15.05 Effect of Certificate of Authority.**

(a) A certificate of authority authorizes the foreign corporation to which it is issued to transact business in this state subject, however, to the right of the state to revoke the certificate as provided in this chapter.

(b) A foreign corporation with a valid certificate of authority has the same but no greater rights and has the same but no greater privileges as, and except as otherwise provided by this chapter is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic corporation of like character.

(c) This chapter does not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.

**293-A:15.06 Corporate Name of Foreign Corporation.**

(a) If the corporate name of a foreign corporation does not satisfy the requirements of RSA 293-A:4.01, the foreign corporation to obtain or maintain a certificate of authority to transact business in this state:

(1) May add the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.," to its corporate name for use in this state.

(2) May use a fictitious name to transact business in this state if its real name is unavailable and it delivers to the secretary of state for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(b) Except as authorized by subsections (c) and (d), the corporate name, including a fictitious name, of a foreign corporation shall not be deceptively similar to:

(1) The corporate name of a corporation incorporated or authorized to transact business in this state.

(2) A corporate name reserved or registered under RSA 293-A:4.02 or 293-A:4.03.

(3) The fictitious name of another foreign corporation authorized to transact business in this state.

(4) The corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state.

(5) A trade name registered with the secretary of state under RSA 349.

(6) A domestic or foreign limited partnership name filed pursuant to RSA 304-B.

(7) The name of a foreign partnership registered pursuant to RSA 305-A, or the name of a New Hampshire Investment trust filed under RSA 293-B.

(c) A foreign corporation may apply to the secretary of state for authorization to use in this state the name of another corporation, incorporated or authorized to transact business in this state, that is the same as or deceptively similar to another name upon the records of the secretary of state. The secretary of state shall authorize use of the name applied for if:

(1) The other corporation consents to the use in writing and submits an undertaking in form satisfactory to the secretary of state to change its name to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation; or

(2) The applicant delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(d) A foreign corporation may use in this state the name, including the fictitious name, of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the foreign corporation:

(1) Has merged with the other corporation.

(2) Has been formed by reorganization of the other corporation.

(3) Has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(e) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of RSA 293-A:4.01, it may not transact business in this state under the changed name until it adopts a name satisfying the requirements of RSA 293-A:4.01 and obtains an amended certificate of authority under RSA 293-A:15.04.

293-A:15.07 Registered Office and Registered Agent of Foreign Corporation. Each foreign corporation authorized to transact business in this state shall continuously maintain in this state:

(1) A registered office that may be the same as any of its places of business.

(2) A registered agent, who may be:

(i) An individual who resides in this state and whose business office is identical with the registered office.

(ii) A domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office.

(iii) A foreign corporation or foreign not-for-profit corporation authorized to transact business in this state whose business office is identical with the registered office.

293-A:15.08 Change of Registered Office or Registered Agent of Foreign Corporation.

(a) A foreign corporation authorized to transact business in this state may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth:

(1) Its name.

(2) The street address of its current registered office.

(3) If the current registered office is to be changed, the street address of its new registered office.

(4) The name of its current registered agent.

(5) If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment.

(6) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(b) If a registered agent changes the street address of his business office, he may change the street address of the registered office of any foreign corporation for which he is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement of change that complies with the requirements of subsection (a) and recites that the corporation has been notified of the change.

293-A:15.09 Resignation of Registered Agent of Foreign Corporation.

(a) The registered agent of a foreign corporation may resign his agency appointment by signing and delivering to the secretary of state for filing the original and one exact or conformed copy of a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

(b) The secretary of state shall mail the copy to the foreign corporation at its principal office address shown in its most recent annual report.

(c) The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

293-A:15.10 Service on Foreign Corporation.

(a) The registered agent appointed by a foreign corporation authorized to transact business in this state shall be an agent of the corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served.

(b) Whenever a foreign corporation authorized to transact business in this state shall fail to appoint or maintain a registered agent in this state, or whenever any registered agent cannot with reasonable diligence be found at the registered office, or whenever the

certificate of authority of a foreign corporation shall be suspended or revoked, then the secretary of state shall be an agent for the corporation upon whom any process, notice, or demand may be served. Service on the secretary of state of any process, notice, or demand shall be made by delivering to and leaving duplicate copies of the process, notice or demand at the office of the secretary of state.

(c) In the event any process, notice or demand is served on the secretary of state, he shall immediately cause one of the copies of the process, notice or demand to be forwarded by certified mail, addressed to the corporation at its principal office in the state or country under the laws of which it is incorporated. Any service so had on the secretary of state shall be returnable in not less than 30 days.

(d) The secretary of state shall keep a record of all processes, notices and demands served upon him under this section, and shall record in the record the time of the service and his action with reference to it. Nothing contained in this section shall limit or affect the right to serve any process, notice or demand, required or permitted by law to be served upon a foreign corporation in any other matter now or hereafter permitted by law.

## **B. Withdrawal**

### **293-A:15.20 Withdrawal of Foreign Corporation.**

(a) A foreign corporation authorized to transact business in this state shall not withdraw from this state until it obtains a certificate of withdrawal from the secretary of state.

(b) A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application shall set forth:

(1) The name of the foreign corporation and the name of the state or country under whose law it is incorporated.

(2) That it is not transacting business in this state and that it surrenders its authority to transact business in this state.

(3) That it revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state.

(4) A mailing address to which the secretary of state may mail a copy of any process served to him under subparagraph (b)(3).

(5) A commitment to notify the secretary of state in the future of any change in its mailing address.



(6) A statement from the department of revenue administration that all taxes due from or accrued by the corporation through the date of the application for withdrawal have been either assessed and paid, or adequately provided for in a manner acceptable to the department.

(c) After the withdrawal of the corporation is effective, service of process on the secretary of state under this section is service on the foreign corporation. Upon receipt of process, the secretary of state shall mail a copy of the process to the foreign corporation at the mailing address set forth under subsection (b).

### **C. Revocation of Certificate of Authority**

293-A:15.30 Grounds for Revocation. The secretary of state may commence a proceeding under RSA 293-A:15.31 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(1) The foreign corporation does not deliver its annual report to the secretary of state within 60 days after it is due.

(2) The foreign corporation does not pay within 60 days after they are due any franchise taxes or penalties imposed by this chapter or other law.

(3) The foreign corporation is without a registered agent or registered office in this state for 60 days or more.

(4) The foreign corporation does not inform the secretary of state under RSA 293-A:15.08 or 293-A:15.09 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within 60 days of the change, resignation, or discontinuance.

(5) An incorporator, director, officer, or agent of the foreign corporation signed a document he knew was false in any material respect with intent that the document be delivered to the secretary of state for filing.

(6) The secretary of state receives a duly authenticated certificate from the secretary of state or other official having the custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger.

293-A:15.31 Procedure for and Effect of Revocation.

(a) If the secretary of state determines that one or more grounds exist under RSA 293-A:15.30 for revocation of a certificate of authority, he shall mail written notice of his determination to the corporation at its registered office in this state, or if the corporation has no registered office, to the corporation at its principal address.

(b) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within 60 days after written notice is mailed, the secretary of state may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The secretary of state shall file the original of the certificate and mail a copy to the foreign corporation.

(c) The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(d) The secretary of state's revocation of a foreign corporation's certificate of authority appoints the secretary of state the foreign corporation's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign corporation was authorized to transact business in this state. Service of process on the secretary of state under this subsection is service on the foreign corporation. Upon receipt of process, the secretary of state shall mail a copy of the process to the secretary of the foreign corporation at its principal office shown in its most recent annual report or in any subsequent communication received from the corporation stating the current mailing address of its principal office, or, if none are on file, in its application for a certificate of authority.

(e) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

293-A:15.32 Appeal from Revocation.

(a) A foreign corporation may appeal the secretary of state's revocation of its certificate of authority to the superior court within 30 days after the certificate of revocation is mailed. The foreign corporation appeals by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the secretary of state's certificate of revocation.

(b) The court may summarily order the secretary of state to reinstate the certificate of authority or may take any other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

### **E. Judicial Supervision**

293-A:15.40 Court Action to Protect Shareholders. (Reserved)

293-A:15.41 Ordinary Relief. (Reserved)

293-A:15.42 Extraordinary Relief; Share Purchase. (Reserved)

293-A.15.43 Extraordinary Relief; Dissolution. (Reserved)

## **F. Transition Provisions**

293-A:15.50 Application to Existing Corporations. (Reserved)

293-A:15.51 Reservation of Powers to Amend or Repeal. (Reserved)

293-A:15.52 Saving Provisions. (Reserved)

293-A:15.53 Severability. (Reserved)

293-A:15.54 Repeal. (Reserved)

293-A:15.55 Effective Date. (Reserved)

## **Records and Reports**

### **A. Records**

293-A:16.01 Corporate Records.

(a) A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

(b) A corporation shall maintain appropriate accounting records.

(c) A corporation or its agent shall maintain a record of its shareholders, in a form that permits preparation of a list of the names and addresses of all shareholders, in alphabetical order by class of shares showing the number and class of shares held by each.

(d) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(e) A corporation shall keep a copy of the following records at its principal office:

(1) Its articles or restated articles of incorporation and all amendments to them currently in effect.

(2) Its bylaws or restated bylaws and all amendments to them currently in effect.

(3) Resolutions adopted by its board of directors creating one or more classes or series of shares, and fixing their relative rights, preferences, and limitations, if shares issued pursuant to those resolutions are outstanding.

(4) The minutes of all shareholders' meetings, and records of all action taken by shareholders without a meeting, for the past 3 years.

(5) All written communications to shareholders generally within the past 3 years, including the financial statements furnished for the past 3 years under RSA 293-A:16.20.

(6) A list of the names and business addresses of its current directors and officers.

(7) Its most recent annual report delivered to the secretary of state under RSA 293-A:16.22.

**293-A:16.02 Inspection of Records by Shareholders.**

(a) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in RSA 293-A:16.01(e) if he gives the corporation written notice of his demand at least 5 business days before the date on which he wishes to inspect and copy.

(b) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection (c) and gives the corporation written notice of his demand at least 5 business days before the date on which he wishes to inspect and copy:

(1) Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders, and records of action taken by the shareholders or board of directors without a meeting, to the extent not subject to inspection under subsection (a).

(2) Accounting records of the corporation; and

(3) The record of shareholders.

(c) A shareholder may inspect and copy the records described in subsection (b) only if:

(1) His demand is in writing, and is made in good faith and states a proper purpose;

(2) He describes with reasonable particularity his purpose and the records he desires to inspect; and

(3) The records are directly connected with his purpose.

(d) The right of inspection granted by this section may not be abolished or limited by a corporation's articles or incorporation or bylaws.

(e) This section does not affect:

(1) The right of a shareholder to inspect records under RSA 293-A:7.20 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant.

(2) The power of a court, independently of this chapter, to compel the production of corporate records for examination.

(f) For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or by a nominee on his behalf.

**293-A:16.03 Scope of Inspection Right.**

(a) A shareholder's agent or attorney has the same inspection and copying rights as the shareholder he represents.

(b) The right to copy records under RSA 293-A:16.02 includes, if reasonable, the right to receive copies made by photographic, xerographic, or other means.

(c) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the shareholder. The charge shall not exceed the estimated cost of production or reproduction of the records.

(d) The corporation may comply with a shareholder's demand to inspect the record of shareholders under RSA 293-A:16.02(b)(3) by providing him with a list of its shareholders that was compiled no earlier than the date of the shareholder's demand.

#### 293-A:16.04 Court-Ordered Inspection.

(a) If a corporation does not allow a shareholder who complies with RSA 293-A:16.02(a) to inspect and copy any records required by that subsection to be available for inspection, the superior court of the county where the corporation's principal office, or, if none in this state, its registered office, is located may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

(b) If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other record, the shareholder who complies with RSA 293-A:16.02(b) and (c) may apply to the superior court in the county where the corporation's principal office, or, if none in this state, its registered office, is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(c) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the shareholder's costs, including reasonable counsel fees, incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.

(d) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding shareholder.

## B. Reports

#### 293-A:16.20 Financial Statements for Shareholders.

(a) A corporation shall furnish its shareholders annual financial statements, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year, an income statement for that year, and a statement of changes in shareholders'

equity for the year unless that information appears elsewhere in the financial statements. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements shall also be prepared on that basis.

(b) If the annual financial statements are reported upon by a public accountant, his report shall accompany them. If not, the statements shall be accompanied by a statement of the president or the person responsible for the corporation's accounting records:

(1) Stating his reasonable belief whether the statements were prepared on the basis of generally accepted accounting principals and, if not, describing the basis of preparation; and

(2) Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

(c) A corporation shall mail the annual financial statements to each shareholder within 120 days after the close of each fiscal year. Thereafter, on written request from a shareholder who was not mailed the statements, the corporation shall mail him the latest financial statements.

#### 293-A:16.21 Other Reports to Shareholders.

(a) If a corporation indemnifies or advances expenses to a director under RSA 293-A:8.51, 293-A:8.52, 293-A:8.53, or 293-A:8.54 in connection with a proceeding by or in the right of the corporation, the corporation shall report the indemnification or advance in writing to the shareholders with or before the notice of the next shareholders' meeting.

(b) If a corporation issues or authorizes the issuance of shares for promissory notes or for promises to render services in the future, the corporation shall report in writing to the shareholders the number of shares authorized or issued, and the consideration received by the corporation with or before the notice of the next shareholders' meeting.

#### 293-A:16.22 Annual Report for Secretary of State.

(a) Each domestic corporation, and each foreign corporation authorized to transact business in this state, except corporations making returns to the insurance commissioner, shall deliver to the secretary of state for filing an annual report that sets forth:

(1) The name of the corporation and the state or country under whose law it is incorporated.

(2) The address of its registered office and the name of its registered agent at that office in this state.

(3) The address of its principal office.

(4) The names and business addresses of its directors and principal officers.

(5) A brief description of the nature of its business.

(b) Information in the annual report shall be current as of the date the annual report is executed on behalf of the corporation.

(c) The first annual report shall be delivered to the secretary of state between January 1 and April 1 of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business; provided, however, that a foreign corporation that has received its certificate of authority at any time between December 1 of the proceeding year and April 1, or a domestic corporation which has received its certificate of incorporation during the same period shall not be required to file an annual report during that year. Subsequent annual reports shall be delivered to the secretary of state between January 1 and April 1 of the following calendar years.

(d) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the secretary of state within 30 days after the effective date of notice, it is deemed to be timely filed.

### **Transition Provisions**

293-A:17.01 Application to Existing Domestic Corporations. This chapter applies to all domestic corporations in existence on January 1, 1993, that were incorporated under any general statute of this state providing for incorporation of corporations for profit if power to amend or repeal the statute under which the corporation was incorporated was reserved.

293-A:17.02 Application to Qualified Foreign Corporations. A foreign corporation authorized to transact business in this state on January 1, 1993, is subject to this chapter, but is not required to obtain a new certificate of authority to transact business under this chapter.

293-A:17.03 Saving Provisions.

(a) Except as provided in subsection (b), the repeal of a statute by this chapter does not affect:

(1) The operation of the statute or any action taken under it before its repeal.

(2) Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal.

(3) Any violation of the statute, or any penalty, forfeiture, or punishment incurred because of the violation, before its repeal.

(4) Any proceeding, reorganization, or dissolution commenced under the statute before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the statutes as if it had not been repealed.

(b) If a penalty or punishment imposed for violation of a statute repealed by the act inserting this chapter is reduced by this chapter, the penalty or punishment if not already imposed shall be imposed in accordance with this chapter.

293-A:17.04 Severability. If any provision of this chapter or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or applications of the chapter that can be given effect without the invalid provision or application, and to this end the provisions of the chapter are severable.

2 Reference Change. Amend RSA 77-A:18, II to read as follows:

II. A business organization wishing to obtain a statement for withdrawal[, in accordance with RSA 293-A:126, I(f),] shall submit a written request containing the complete corporate name and identification number and accompanied by a non-refundable fee of \$30 to the commissioner of revenue administration. This fee shall be deposited into the general fund. If, after reviewing the business organization's records, the commissioner determines that no returns, tax, interest or penalties for taxes administered by the department are due and unpaid, the commissioner shall prepare a statement for withdrawal [for the purposes required under RSA 293-A:126, I(f)].

3 Reference Change. Amend RSA 292:5-b to read as follows:

292:5-b Foreign Nonprofit Corporations; Registration, Fees. A foreign nonprofit corporation established for any of the purposes set forth in RSA 292:1 or for a substantially similar purpose, desiring to do business in this state in furtherance of such purpose for the benefit of citizens of this state, may register as a foreign corporation by making application as provided in [RSA 293-A:114] **RSA 293-A:15.03, excepting [293-A:114, I(b), and RSA 293-A:115] those portions relative to using a form of the words "corporation," "company," "incorporated" or "limited" in the corporate name.** Any such foreign nonprofit corporation shall file the return and pay the fee provided in RSA 292:25-29.

4 Reference Change. Amend the introductory paragraph of RSA 301-A:4 to read as follows:

301-A:4 Powers of Association. Each association shall have the following powers in addition to those granted under RSA [293-A:4] **293-A:3.02:**

5 Reference Change. Amend RSA 304-B:49, IV to read as follows:

IV. A statement that the secretary of state is appointed the agent of the foreign limited partnership for service of process if no



agent has been appointed under paragraph III or, if appointed, the agent's authority has been revoked or if the agent cannot be found or served with the exercise of reasonable diligence. Service of process shall be made in the manner provided for service upon foreign corporations under RSA [293-A:119-121] **293-A:15.10**;

6 Reference Change. Amend the introductory paragraph of RSA 386-B:8, III to read as follows:

III. The general purpose of a mutual holding company shall be conducting and carrying on the business and activities of a bank holding company. A mutual holding company shall not take deposits. It shall have the general powers of business corporations as set forth in RSA [293-A:4] **293-A:3.02**. A mutual holding company may:

7 Reference Change. Amend RSA 388:13, I and II to read as follows:

I. Any stockholder of a bank shall have the right to dissent from, and to obtain payment for his shares in the event of any merger, consolidation, or other union of banks under the provisions of this chapter. Such right shall be the same as the right provided for in [RSA 293-A:81] **RSA 293-A:13.01 through RSA 293-A:13.31** with respect to mergers and consolidations of business corporations and shall be subject to the same limitations. Any stockholder of a bank electing to assert the right provided for by this section shall do so in accordance with the provisions of RSA [293-A:82] **RSA 293-A:13.01 through RSA 293-A:13.31**, which provisions shall be binding upon the stockholder and upon the bank and shall in all respects govern the perfection and enforcing of the right provided for by this section.

II. If a proposed merger, consolidation, or other union of banks under the provisions of this chapter is submitted to a vote at a meeting of stockholders, the notice of meeting shall notify all stockholders that they have or may have a right to dissent and obtain payment for their shares by complying with the terms of this section and of RSA [293-A:82] **293-A:13.01 through RSA 293-A:13.31** and shall be accompanied by a copy of this section[, RSA 293-A:81, and RSA 293-A:82] **and RSA 293-A:13.01 through RSA 293-A:13.31**.

8 Reference Change. Amend RSA 401:6 to read as follows:

401:6 Certification of Agreement. The articles of agreement shall be submitted to the insurance commissioner, who shall examine same. The commissioner shall not approve the articles of agreement of a company until he is satisfied, by such examination as he may make and such evidence as he may require, that: (1) the incorporators are of good repute and intend in good faith to operate the company; (2) the company has capable management; (3) the company has a reasonable prospect for success in the kind or kinds of business which it proposes to transact; (4) the actuarial projections, policy forms, rates, dividends, commissions, and other expenses contem-

plated as well as reinsurance, market and taxes are sound and reasonable; and (5) the articles of agreement otherwise comply with the law. Upon satisfying himself that the foregoing requirements have been met, the commissioner shall so certify by an endorsement upon said articles of agreement, which shall then be recorded in accordance with the provisions of RSA [293-A:55] **293-A:1.20 and RSA 293-A:2.02** provided that copies of the original documents filed with the secretary of state shall also be filed with the insurance commissioner.

9 Reference Change. Amend RSA 401:7 to read as follows:

401:7 Amendment of Charter or Articles of Incorporation. Any insurance company organized under the laws of the state, whether by special charter or under the general law, shall be entitled to amend its charter or articles of incorporation, so as to acquire the authority to do any or all kinds of insurance business which corporations organized under the provisions of this chapter are authorized to do, and may otherwise amend its charter or articles, in any manner not inconsistent with this chapter, by a majority vote of all its stock, or, if a mutual company, by a majority vote of those members present and voting, at a meeting called for that purpose. Any such company may, with approval of the commissioner, increase or reduce its capital stock and, subject to the limitations hereinafter provided, may change the par value of the shares of its capital stock at a meeting called for the purpose, by vote of its stockholders as provided by RSA [293-A:59] **293-A:10.01 through RSA 293-A:10.09**. The par value of the shares of stock of any such company now outstanding or hereafter issued may be such an amount as the commissioner may approve.

10 Reference Change. Amend RSA 401:12 to read as follows:

401:12 Clerk; Registered Agent; Registered Office. In lieu of the provisions of RSA [293-A:12] **293-A:8.40(c)**, every insurer subject to this chapter may have and continuously maintain in this state a clerk who shall be the registered agent of the insurer and who shall be an individual resident of this state whose residence or business office shall be the registered office of the insurer.

11 Reference Change. Amend RSA 401:15 to read as follows:

401:15 Name. Corporations subject to regulation by the insurance commissioner shall not be subject to the requirements of RSA [293-A:8, I(a)] **293-A:4.01(a)(1)** pertaining to the designation of the corporate status and the corporate name but shall be subject to all other provisions of RSA [293-A:8] **293-A:4.01**, except that any filings, including trade names, shall be subject to the examination by and approval of the insurance commissioner before filing with the secretary of state.

12 Reference Change. Amend RSA 401-B:13, II(d) to read as follows:

(d) If the parent corporation is neither a domestic corporation nor an authorized insurer, its agreement to be bound by paragraph VI of this section and RSA [293-A:81-82] **293-A:13.01 through RSA 293-A:13.31** with respect to the plan, its consent to the enforcement against it in this state of the rights of stockholders pursuant to the plan, and a designation of the insurance commissioner as the agent upon whom process may be served against the parent corporation in the manner set forth in RSA 405:10 in any action or proceeding to enforce any such rights; and

13 Reference Change. Amend RSA 401-B:13, VI to read as follows:

VI. A stockholder whose stock is acquired pursuant to this section and who elects to dissent from such acquisition shall, by complying with this paragraph and with RSA [293-A:81-82] **293-A:13.01 through RSA 293-A:13.31**, have the right to receive payment in cash for the fair value of his shares, subject to final approval by the insurance commissioner, by filing a written notice of his election to dissent and a demand for payment to him for his stock at its fair value with the parent corporation within 30 days after the delivery to him of either a copy of the plan or a summary thereof, pursuant to paragraph IV.

14 Reference Change. Amend RSA 420-A:4-a, I to read as follows:

I. A health service corporation may indemnify any person who serves as director, officer, or trustee of such corporation by contract or by including an indemnity provision in its articles of agreement or bylaws substantially in accordance with RSA [293-A:5] **293-A:8.50 through 293-A:8.58**. Indemnity may be offered for any and all damages occurring on or after January 1, 1991.

15 Effective Date. This act shall take effect January 1, 1993.

SENATOR DUPONT: Thank you, Madam President, and members of the Senate. I rise in support of the floor amendment as offered by Senator Russman. I would just add that in order to understand the complexity of the world that we live in, I guess you would have to take a look at a piece of legislation that is 150 pages long in order to understand really how complex all of our lives are getting. One of the things that I find real interesting is that if you go over in the Fish and Game committee over in the House, they have on the wall a poster that is probably 12' high and 8' wide that has all of the Fish and Game laws that we have in the state of New Hampshire from 1909 on that one poster. Today we have in front of us 150 pages dealing with corporate law. Probably back in 1909 we probably had one poster full of laws about corporate laws. The complexity of what we are dealing with has gotten to the point where we have to deal

with legislation this size. This brings me to the reason why I am on the floor. This is an important piece of legislation and an extremely complex one. The Senate Judiciary committee had a job of significance in terms of working through this legislation to bring it to the floor today. They have run out of time along with the fact that legislative services dealing with this legislation has caused some problems in terms of timing. I have gone to the Speaker of the House and Representative Gross, the Majority Leader, and asked for the willingness of the House to allow us, the Senate Judiciary committee who still has some significant questions that need to be addressed, to allow us to go over and sit down with the House and have a subcommittee of Judiciary go over to the House and sit down with their concerns, and more importantly, to start where we left off, rather than getting the House to start from scratch with the bill, because of the complexity of it to be able to allow them to work with the House committee in a formal arrangement to try and resolve some of the issues in this bill that still remain. We will be getting this back if it passes the House in the Committee of Conference. I can't tell you whether or not that will in fact happen, I hope that it does happen and that we can work through some of the problems. Senator Podles I had asked to appoint a committee, and she has done that. It consists of herself and Senator Hollingworth and Senator Russman. Senator Hollingworth, in the diligence that she always displays on complex pieces of legislation has gone through this, and I know that she has some concerns that she probably will raise with you today that need to be addressed, and I think that we are all in agreement on that. I think that we also recognize that there is some merit in this legislation and the process ought to continue. If we can't fix it by the end of the session, then we will have to deal with it next year. Hopefully, this will allow the Senate some comfort in being able to deal with this complex issue and get our concerns addressed. I thank the Judiciary committee for their willingness to do that, and also, Senator Podles for her willingness to serve on the committee as one of the members. With that I will sit down and urge my colleagues to allow us to move this through the process.

SENATOR HOLLINGWORTH: I would like to say that I am going to support the ought to pass motion of SB 308. I do have some difficulties as you have heard from Senator Dupont. This is a complex issue and there are some policy changes that I think are significant. I think I would like, rather than to try to address each and every one on the floor here now is just to say that I think that if we could get together at anytime, I would be happy to go through the bill, it is 159 pages now and it has been amended, I think, four times since we first saw it. I am honored to sit on the committee with Senator

Podles as the Chairman. She is always working to see good legislation come out of her committee and to understand it. This had due opportunity to be heard. We did work and we did labor over it. The Judiciary committee did give proper attention to this bill and I want that to be clear, because there had been some suggestion that because of the constraints that we were under, that we did not do that. I want to say that my impression when I saw the magnitude of this, was that this would be a bill that would go into study. That it would not be possible no matter what kind of time that we gave it because of the time restraints that we work under, that this bill would pass through this body or the House body, but because there seems to be some urgency by some people to see this bill passed, I will try to work hard with the House Judiciary and Senator Podles, and Senator Russman to achieve that. The policy changes that bother me are the preempted rights. It has always been the process in New Hampshire and in most states to allow shareholders to buy and purchase new shares. Under this bill, the preempted rights would no longer be yours unless it was incorporated in your bylaws or you did so at the time of incorporation. I view that to be an economic boom to lawyers, but not necessarily an economic boom to stockholders and other people in the state of New Hampshire. I think that needs to be properly debated and the public out there to know that this bill would change that policy. It does one other real important thing that I will bring up now, it does allow officers, directors, and employees to receive stock options TAPE INAUDIBLE. So I think those two, I will leave you with. There are about 15 smaller ones on down, but I do think that they are significant. I would hope that any of you that are interested in this subject will come to the hearing in the House. Hopefully, you will hear more about the issues that are there and I will be happy to meet with any of you to discuss them, but because the hour is getting late and I know that this is such a complex issue I won't take up your time now.

SENATOR DISNARD: Madam President, I commend you and Senator Hollingworth for being willing to serve on the committee, but I have a problem. You are talking about 159 pages just handed to us, I understand the urgency that the committee people have indicated, I guess, last night or sometime today before it was printed because we just received it. When I hear members of the committee say that it is a complex issue, there are policy changes, there is a concern over stockholder option problems, there might be an urgency. I wish to call the chambers attention to the fact that next week is a crossover for the House. They are not going to be able to sit down with the subcommittee probably and have hearings until afterwards. At the beginning of each biennium when we have our budget, we have time

where we sit down and we have the pages explained to us so that we understand it. I would like to ask someone on the committee to consider tabling this so that we can have an opportunity to sit down and understand it. I am not going to be able to understand it now. I understand a committee is going to sit down and talk about it, but where is our input going to be? I feel extremely uncomfortable going back to my voters and say that I just received 159 pages, an increase from 150 pages that the committee worked on yesterday. I am wondering if the committee knows what the changes are in the 10 pages. I am not critical of the committee. I know the pressure that you are under, but I have a problem and I hope that someone else will address this.

SENATOR W. KING: Let me just take a moment and go through the process that this bill has already gone through. In the last session of the legislature, we appointed a committee that was to look at corporate law in the state of New Hampshire. That committee consisted of Senators, Representatives, it consisted of people who were involved as owners of corporations as well as stockholders in corporations and people from all of those aspects were interviewed by members of the committee. In addition to that, copies of this legislation were sent out to members including the President of the New Hampshire Trial Lawyers Association, who if there were major objections should have been the first force to come up with those objections. This committee spent the entire summer . . . in their first meeting this committee found out that the Business and Industry Association had had a group of corporate lawyers who have been working on a revision of the corporate act that was based on a uniform corporate code for the country. Given the fact that much of what we have as corporate law in the state of New Hampshire today is 42 years or older. It was a timely coincidence, so rather than reinventing the wheel, the committee to study corporate law decided that it would work with the document that was produced by the Business and Industry Association Group, they were not all members, I don't believe, of the BIA, but they were all corporate attorneys. So over the course of the summer we went through this document and we expressed concerns, many of the same concerns that Senator Hollingworth has brought up today. In fact, yes, there are changes that effect minority stockholders in this bill, there are changes that give management more authority, but there are also changes that allow management to be removed much more easy. So for each thing in this bill that adds to the authority of management, there is something on the other side that makes management more accountable to the stockholders. That is why we did not choose to make changes in the areas where Senator Hollingworth has ad-

dressed. We did not choose to make them in those areas because it was our intent to give management flexibility to do its job, but make it accountable when it did a poor job. That is the idea, make it accountable when it does a poor job, make it easier to remove that management if they do a lousy job. Much of this bill is based on the corporate codes in Delaware. We have taken the best of Delaware's codes and left off the worst of Delaware's codes. I guess the bottom line is that once again we are talking about the question of how you create an atmosphere that is conducive to economic growth in the state while still protecting those people who fear, rightfully so, that business might run roughshod over the little guy. This bill as it is structured, I believe, a large part does that. It is completely legitimate to have questions, I hope that those questions will be dealt with when it gets over to the House. I want it to be clear that this is not a process that began two weeks ago, this is not a process that began one month ago. The Judiciary committee alone has had this bill since January. This is a process that began in the last session, the first year of the biennium when we appointed a committee that the Senate, I assume believed, was going to be looking at these issues over the course of the summer and the fall.

SENATOR HOLLINGWORTH: Senator King, I heard you say that you thought that you balanced the thing by making it easier for shareholders to make directors more accountable and yet you deleted two grounds by which a shareholder can seek a judicial desolation of the corporation under the current law . . .

SENATOR W. KING: Correct.

SENATOR HOLLINGWORTH: And those two places are when a director or those people who are in control of the corporation or illegally or oppressive or fraudulently operating. Also you chose to delete from the original current law, that if a corporation is spending the assets or mis-applying them or wasting them, you removed those two conditions under which directors and officers in charge would be more strictly under control, so I wonder what we got in the balance for those two areas?

SENATOR W. KING: Senator Hollingworth, you said that you weren't going to go into detail and now we are, so now I need to know to what section of the bill are you referring to?

SENATOR HOLLINGWORTH: Under the judicial dissolution of the corp. I had no intention of going into the bill, but . . .

SENATOR W. KING: Would you give me the page please?

SENATOR HOLLINGWORTH: I don't have the page number, but it was just when you said that there was a balance . . .

SENATOR W. KING: Yes indeed.

SENATOR HOLLINGWORTH: And that this had quite a bit of . . . I find that seems to be a real imbalance.

SENATOR W. KING: As the law currently reads, Senator Hollingworth, minority stockholders can destroy a business through the legal process. In fact, that has happened on several occasions in the state of New Hampshire where the minority stockholders have brought an action that has so tied up the business in court and shut it down in the process that the business had to go out of business as a result of that. I believe that is probably the section to which you are referring. Those minority rights have been changed, but we have given the stockholders the opportunity to remove directors if they feel that they are acting fraudulently or in any way that is not beneficial to the stockholders of the corporation. That is the other side of the issue.

SENATOR DISNARD: Senator King, would you believe that the more that I listen to you speak, the more I don't think the people on the committee understand the bill?

SENATOR W. KING: Senator Disnard, I believe that by and large that the members of the Judiciary committee do understand the bill. I also understand that it is difficult for any Senator in this body to keep up with the work that is occurring in other committees. This bill however, has been in one form or another, around since the beginning of this summer and anybody who was concerned did have the opportunity to see it at any point along the way. Certainly once it was introduced into the Senate Judiciary committee in January, there was the opportunity for any of us who were concerned about this issue to do that. We rely by and large on the committee process, I understand that. The committees that have been involved in this are the Senate House appointed committee to study corporate law and the Judiciary committee. I believe that at least the basis for this law is going to be good for economic growth in the state, it protects minority stockholders and makes management more accountable than it is under the current law. It seems to me that it is worth pursuing, worth sending over to the House and I am sure that the members of the House Judiciary committee will be more than willing to work with the Senators who have concerns about the issues in this bill.

SENATOR DISNARD: Would you believe, Senator, I do not believe that I would be doing service, I would be doing dis-service to the 45,000 people that I represent to vote on a bill that was just given to us with 159 pages?



SENATOR RUSSMAN: On that specific issue you have to understand that one of the primary things that somebody can do right now is file what they call a petition to dissolve. You have to understand the unique ramification of that in terms of credit and in normal operations of a corporation. I mean that is such a chilling effect on it that any bank that has a line of credit, if somebody has filed a petition to dissolve in Superior court, they are just going to close the door on the credit issue. I mean it is totally unfair. If somebody that is unhappy or dissenting wants to just literally, shut the corporation down, they can file that. What is in there in return, or an alternative is that they can file a similar petition, but it is called a petition to remove directors and that way they can allege what the misconduct is on the part of the director. The judicial process can take affect on whether or not there has actually been misconduct or what have you on the part of the director and the corporation can go on in its normal day today, carrying out its normal role or the things that it is trying to do. I think that there are specific answers to the concerns and it is not, I will admit that it is not an uncomplicated area, but there have been, I think, adequate give and take here, relative to the rights of shareholders and the rights of the corporation in and of itself. I don't think that any lawyer worth his solace that would represent somebody in a corporate matter couldn't easily manage to deal with a corporation as it always would, whether it is a representative for the shareholders or a representative for the corporation it shelves through the Board of Directors. I don't have any major worry with that, myself.

SENATOR DUPONT: I want to just add to what I have said earlier. I am very, very sympathetic to the concerns that my colleague from district #8 has expressed here today. I quite frankly feel somewhat uncomfortable with the position that we have put the members of the Senate in by bringing this in as a floor amendment; however, I think that what I said earlier, I'll reemphasize by saying that if there is any reluctance on my part to trust the House to work with us on this bill, I would not stand here today and urge the Senate to move it forward. If there was any sense that I had that this would come back to us without an amendment, I wouldn't stand here and say to move it forward. I think by elevating this to the level that we have with the House that they understand that we have some significant concerns about this legislation that need to be addressed, but that the bill is important enough that it needs to go through the process. We have basically arrived at an agreement with the House that they would have all of their legislation over to us today and we would have all of ours over to them and even though they are not going to be here next week, the scheduling process, getting the bills signed off

and moved over to the next body is very, very important so that they can start hearings the week that they get back. If there was anyway that we had additional time that we could lay this on the table and deal with it later on, I would do that today. But I think that it is important that the House committee get started working on it and any delay will not serve a purpose.

SENATOR PRESSLY: Senator Dupont, given your statement on the time restraints and the size of the bill, might this bill be more accurately called a 'trust' bill?

SENATOR DUPONT: Senator, I have always enjoyed the opportunities that I have had to trust my colleagues on legislation, because I think that we all recognize our own limitations in terms of time and ability to try and go through every bill that comes before us. In this case, I trust Senator Podles and Senator Hollingworth and Senator Russman to represent the Senate on this piece of legislation before the House. I think given those three individuals standing in this body, I think that it is fair to say that the bill is in competent hands and that they will represent our interest over in the House.

SENATOR PRESSLY: Would it be fair to say for those of us who have not had the opportunity to study or read this that we will be voting for this with that attitude of trust?

SENATOR DUPONT: Thank you, Senator Pressly. I think that is fair to say and again, I think that the individuals are worthy of your trust.

SENATOR OLESON: As I said before today, I have always opposed to a great extent, floor amendments even when they are half a page long and now I have one that is 159 pages long. The same old story when I used to be in the House when we didn't have the time. They would say 'well we will send it over to the Senate and let them clean it up' and now we are saying the same thing. I don't like it either way, Mr. President. Any bill if I have time, now this would take several evenings of my time to go through to see if all of the t's are crossed and the i's are i's and in the proper places. I would like to have that kind of an opportunity, if I may. No doubt, I am not just trusting anybody, absolutely not. The worst things in this world as occurred by suggestions and the effort of well meaning people. I am getting a little bit long in years and I am getting a little bit more cynical and one thing and another, so I will salute the people who have composed this and have taken the time and the lord knows what else, at the same time, I think that this should have come in with a bill, with the proper hearings where everyone in the state could scrutinize it and

not like at this late date. I think in that aspect that we should sharpen up and behave ourselves a little bit more properly than we have in the past. Thank you.

SENATOR NELSON: Madam Chairman, as a member of the committee, I wanted to say that I feel comfortable in sending the bill to the House and only with this condition that you, the Senate Chairman of the Judiciary committee, Senator Podles, and Senator Russman and Senator Hollingworth are involved and it is our understanding that it will go to the Senate Judiciary and they are known as a very hard working committee. I feel that with their oversight, it is alright. Given the time that it is going to take to do this bill, there are 23 of those people over there that could do a good job.

Floor amendment adopted.

Ordered to third reading.

Senators Disnard, Heath and Roberge are opposed to SB 308.

Recess.

President Dupont in the Chair.

**SB 317**, an act relative to siting manufactured housing in municipalities. Public Affairs committee. No Recommendation. Senator Russman for the committee.

Recess.

Out of recess.

SENATOR BASS: Mr. President, the Public Affairs committee does not have a recommendation on this bill, not because the committee has not considered it, but because of a procedural problem. I had scheduled an executive session on this and one other bill for today, but unfortunately, after that schedule came out the Senate was scheduled to meet at ten. I did not feel comfortable, nor do I rarely feel comfortable executing a bill out without having the opportunity for a lengthy debate within the committee and deliberation and so forth. As a result I advised the sponsor of this bill that I would report it out as such and that he was welcome to offer a substitute motion, a motion rather, if he wished to. At the time, if he does offer a motion, which I suspect he will, given the fact that I see something being handed out, I will address that motion at that time.

SENATOR COLANTUONO: I rise to substitute a motion of ought to pass with the understanding that if the motion carries that I will offer a floor amendment. To further explain what happened to this bill the interested parties in this bill who are proposing it attended the hearing, listened to some of the concerns that came out at the

public hearing and drafted an amendment which was presented to the committee. Because of the procedural problem that Senator Bass mentioned, the amendment didn't get out as an ought to pass with amendment recommendation or an inexpedient to legislate or either one. The amendment is here as a floor amendment. I believe it answers all of the concerns that were raised at the hearing. It may not answer all of the concerns about the bill, but I would just like to explain what the amendment does if I could have all of the Senators attention.

SENATOR COLANTUONO: I would offer floor amendment #5299L to SB 317. SB 317 with the amendment amends the existing law relative to zoning for manufactured housing. Under the present law the municipality may allow manufactured houses on individual lots or in parks and subdivisions. This law has been on the books since 1981 and since then there has been several revisions of it to tightened up the language sufficient to make it enforceable. What is happening is that a lot of towns and cities are simply ignoring this law. The purpose of the bill, obviously, is to provide more affordable housing for the people of New Hampshire. My amendment if adopted would change the current law in the following ways: (1) Manufactured housing so long as it is built to a national code, which means that it would have roof type shingles and house type siding, would be allowed in all areas of the community in which single family housing is permitted, except for historic districts and town commons. (2) Manufactured housing in manufactured housing parks would be permitted in most areas of the town which is the current law, but in areas that are capable of being developed. It is my understanding, that many towns allow manufactured housing in parks, but do so in such a way that the parks are not able to be built, because the area in which is designated for parks, is one in which there is a dump site, ledge or other undesirable feature as to the location. (3) In order to provide for affordable housing, the lot sizes in manufactured housing parks according to the current law needs to be reasonable. Unfortunately, some of the communities require that lots in manufactured housing parks be large. Of example, three acres or more, which in essence prevents the building of such parks. In order to try to gain some uniformity, this bill would allow manufactured housing parks so long as they meet all of the other regulations of the towns to be permitted on lots of 10,000 square feet or more depending upon the soils. The standards are set by the water supply by their regulations. (4) Under present law some municipalities require that off site sewer and water are required before a housing park can be built even though the same requirement is not in place for other so called multi-family housings like condo developments or planned

unit developments. Under this law, municipality can require off site sewer and water in parks only if it requires the off site sewer and water for other multi-family homes. Finally attached to this amendment is a penalty provision. This provision codifies existing law which came to us in 1991 from the Supreme court in the case of Britton versus the town of Chester. The codification simply states that if a municipality is not in compliance with this act by July 1, 1993 then upon petition to the Superior court the court may order the project to be built without the need to go back to the local zoning and planning boards. Mr. President, the purpose of this law is to tighten up present language to allow for more affordable housing. I think that the people who always talk about the need for affordable housing should support this bill.

Senator Colantuono offered a floor amendment.

**5299L**

### **Floor Amendment to SB 317**

Amend the bill by replacing sections 1 and 2 with the following:

1 Siting Manufactured Housing in Municipalities. RSA 674:32 is repealed and reenacted to read as follows:

674:32 Manufactured Housing. A municipality shall include manufactured housing in manufactured housing parks and on individual lots in the municipality. A municipality which adopts land use control measures shall allow manufactured housing which complies as of its date of manufacturing with the relevant rules and regulations of the United States Department of Housing and Urban Development building code established pursuant to the National Manufactured Housing Construction and Safety Standards Act, to be located on individual lots in all land areas in districts zoned to permit residential uses within the municipality, except for historic districts or town commons, and in manufactured housing parks and in subdivisions created for the placement of manufactured housing on individually owned lots. Manufactured housing located on individual lots shall comply with lot size, frontage requirements, space limitations and other reasonable controls that conventional single family housing in the same district must meet. No special exception or special permit nor any prerequisite that municipal water or sewer be available, shall be required for manufactured housing located on individual lots or for manufactured housing parks or subdivisions unless such special exception or permit or municipal water or sewer prerequisite is required by the municipality for single family housing in such district. Municipalities shall afford reasonable and realistic opportunities for the economically feasible development of manufactured housing parks, as well as reasonable and realistic opportunities for

the economically feasible expansion of existing manufactured housing parks, within most districts which contain substantial amounts of vacant land capable of being developed in an economically feasible manner. In order to provide such realistic opportunities, lot size for manufactured housing parks shall be based upon rules adopted by the department of environmental services under RSA 485-A relative to on-site sewage disposal for manufactured housing parks, and upon reasonable overall density requirements for manufactured housing parks.

2 Application. Municipalities shall comply with the provisions of section 1 of this act on or before July 1, 1993. In the event of any municipality fails to comply with the provisions of section 1 of this act by July 1, 1993, the superior court shall, upon petition of any person seeking to develop or expand a manufactured housing park in such a non-complying municipality, enter a binding order permitting that person to proceed with the proposed development or expansion, provided the court finds the municipality was not in compliance with section 1 of this act as of the date of the petition, and provided the court is satisfied by a preponderance of the evidence that the proposed development constitutes a reasonable use, and meets all other applicable regulations.

### AMENDED ANALYSIS

This bill requires a municipality which adopts land use control measures to allow manufactured housing to be located on individual lots in all land areas in districts zoned to permit residential uses within the municipality, except for historic districts or town commons, and in manufactured housing parks and subdivisions created for the placement of manufactured housing on individually owned lots. Such manufactured housing must comply as of its date of manufacturing with the relevant rules and regulations of the United States Department of Housing and Urban Development building code established pursuant to the National Manufactured Housing Construction and Safety Standards Act.

The bill adds new lot size requirements which manufactured housing parks must meet.

The bill also includes an application section which requires municipalities to comply with the provisions of the act on or before July 1, 1993, and which allows affected individuals to petition the superior court to proceed with manufactured housing park developments in municipalities which do not comply with the act.

SENATOR SHAHEEN: Senator Colantuono, I certainly believe in the existing law that requires municipalities to provide reasonable opportunities for the siting of manufactured housing; and in fact,

virtually all of the communities in my district have a very high percentage, relatively speaking, to the rest of the state of manufactured housing. Am I correct that what this bill would do, would be to require the town of Lee for example, to allow for the siting of a manufactured home anywhere within the boundaries of that town on any lot without any discretion by the town at all with respect to what their ordinances now say?

SENATOR COLANTUONO: What this bill would require is that it would have to allow manufactured housing units which comply with the United States department of Housing and Urban Development Building codes. Which would basically look like this picture. I am going to pass this picture around so that people can see what we are talking about. You can't really tell by looking at that picture that it is not a stick-built house. Now obviously, it would also include other types of houses, but that is an example. You are not totally correct, because this bill specifically would exempt historic districts or town commons, but it would require the town to allow a manufactured home on individual residential lots to the same degree that it would allow a stick-built home. Now the only exception to that of course would be many residential subdivisions have private restrictions the developer puts on and this bill would still not effect that, obviously. If you had a 10 acre parcel that you wanted to subdivide into five - two acre lots and have \$450,000 mansions on them, no, someone couldn't buy one of the lots and put a mobile home on it or a manufactured home.

SENATOR SHAHEEN: But I am correct that if a developer, for example went bankrupt in one of those developments and there were no existing requirements with respect to those \$450,000 homes, that somebody could come in with a manufactured home as you have in the picture and put it on that lot?

SENATOR COLANTUONO: Yes. The purpose of this bill is to stop the discrimination against manufactured homes versus stick-built homes.

SENATOR OLESON: Senator Colantuono, would you believe that one of the hair shirts that I have been wearing down here for several years has been caused by manufactured homes and etc and etc and etc. To me this is a bill in the right direction and that will help remove one of my hair shirts?

SENATOR COLANTUONO: Well, if you say hair shirt, I guess I'll believe that.

SENATOR HOLLINGWORTH: Senator Colantuono, what did Motor testify to you, when they testified in regard to this bill?

SENATOR COLANTUONO: Well, I have to say that I was the primary sponsor and I went and introduced the bill, but it wasn't in one of my committees, and so I had to leave. I would defer to Senator Bass.

SENATOR BASS: Senator Hollingworth, I would have to get the committee minutes. I can't recall who represents Motor.

SENATOR HOLLINGWORTH: Doris Leveque.

SENATOR BASS: Oh, Doris Leveque.

SENATOR HOLLINGWORTH: Would you believe, Senator Bass, I think that Motor said that some of the bill is good, but they would rather have it only allowing for most of the bill to be amended and that they could not support, unfortunately, Senator Colantuono's amendment the way that it stands. There needs to be more work done on the bill?

SENATOR BASS: Senator Hollingworth, I can't recall the testimony of Motor, but if that is the way that you recall it, I think that you are probably correct.

SENATOR ROBERGE: Senator Colantuono, are there any restrictions on the size of this structure, like square footage size of the structure?

SENATOR COLANTUONO: I believe that those are contained within the building code that is referred in the amendment. I can't give you the specific on it, but I believe that that is covered in it.

SENATOR ROBERGE: Did I hear you say that it had to have, for instance, an asphalt roof and a siding of the type that would normally be used on a normal stick-built structure?

SENATOR COLANTUONO: I am given to understand that this code requires roof type shingles and house type siding.

SENATOR ROBERGE: So you wouldn't be able to have the metal old type structure that we used to call a trailer?

SENATOR COLANTUONO: That is my understanding.

SENATOR MCLANE: Senator Bass, I know that you don't have the minutes with you, but where was the Municipal Association in the hearing on this bill?

SENATOR BASS: The Municipal Association was strongly opposed to this bill.

SENATOR W. KING: Senator Colantuono, I think this is similar to Senator Roberge's question, but if an individual had for example, a 1947 mobile home, as long as they had roof type shingles on it and



siding of some sort, in other words, aluminum vinyl, wood, that would be eligible under the U.S. codes?

SENATOR COLANTUONO: I don't have enough specific knowledge of the code to answer that. I would guess that the answer is definitely no. They have been updating these codes periodically and when you see the quality of the manufacturing that comes out in modern standards, you don't see that type of home anymore.

SENATOR DISNARD: I rise in strong support of this amendment. In my community of Claremont, there is a thriving industry. It employs, I assume, 200 people in my area and I am estimating. I see their units everyday when I travel to Concord because they are parked having a cup of coffee somewhere. I would also like to indicate within the year in my community that there was a bad apartment fire. I was amazed to go by there soon afterwards to see that the remnants of the building had been taken down and removed and this type of manufactured home, six or seven units had been installed and it is probably one of the better looking buildings in that area. So if anyone has the idea that a manufactured home is not attractive, I would like to invite them to visit and enter some of them.

SENATOR W. KING: Senator Colantuono, as I read this, six lines down where it talks about the regulations, it does say that the manufactured housing complies as of its date of manufacturing with the relevant rules and regulations of the United States Department of Housing and Urban Development. So a manufactured housing problem of the 50's then would have to comply with the regulations that were from the 50's correct?

SENATOR COLANTUONO: Well that certainly wouldn't be the intent of the legislation. The effective date being, well you would have to go back to the original bill, but sometime after now, I believe, that the intent of this, and I think the intent of the sponsors, is that it has to meet current regulation.

SENATOR W. KING: So it would be your intent then if the Senate took action on this and if we voted for this, that this issue would be corrected?

SENATOR COLANTUONO: It would be prospective. They must meet current regulations or any prospective regulations, that is the intent.

SENATOR MCLANE: Senator Colantuono, I am sorry, but I am concerned. I first thought that this was a housing bill and so that I am concerned about where we are. The thing that bothers me is that certain communities in New Hampshire have zoning regulations and

rules that deal with manufactured housing. This bill would prevent those communities from having these rules and regulations if they didn't comply with the bill that we have before us, is that correct?

SENATOR COLANTUONO: Well the present situation is that current law says and there has been a strong legislature policy ever since 1981 when the first version of this law passed. It says that communities shall afford reasonable opportunities for the siting of mobile home manufactured housing. That they shall allow in most, but not all land areas, these homes in residential areas. Now the problem is that those two clauses have enough wiggle room so that the towns that don't want these houses, basically just ignore the law completely, and if they are ever challenged, and it is thrown into a court and the judge decides whether it was reasonable or not. There is really no way that our strong public policy in favor of treating these homes the same as stick-built homes, can be enforced. So the point of this law is to tighten it up and to conform to our policy that we have been passing for the last 10 years. We have amended this. Senator Shaheen had the book, but we have amended this law, I think three or four times since 1981 and they keep finding loopholes in it, and it is almost like fireworks. I liken this to the fireworks bill that we finally passed. This is trying to get rid of the loopholes so that people who want to buy a house that might cost \$30,000 - \$40,000 from a mobile home or manufactured housing are concerned, but can't afford a \$ 60,000 or \$70,000 - \$100,000 stick-built house, can get a home that they can own.

SENATOR MCLANE: And put it anywhere in a global community?

SENATOR COLANTUONO: Except in a historic area or a town commons, that is right, or any commercial manufacturing or industrial zones.

SENATOR SHAHEEN: I would actually like to read from the current statute if I could, because I think it hits the issue that Senator McLane was referring to. I can't imagine that there is anybody in this room who doesn't believe that we need adequate affordable housing and who isn't supportive of that. The fact is, the statute as it currently reads gives the discretion to the communities to decide where that housing is going to go. That is the concern that I have with this. In the town of Madbury where I live, you can buy a two-acre lot and you can put a mobile home on it if it meets with all of the other zoning requirements. I think that that is fine, but in the town of Durham, they have different ordinances that say that you can't put a mobile home on a quarter acre lot in the middle of town or a manufactured housing unit, I am sorry. I think that is where the discretion ought to be. The law as it is currently written says that, "a

municipality which adopts land use control measures shall allow at its sole discretion, manufactured housing to be located on individual lots in most, but not necessarily all land areas in districts zoned to permit residential subdivisions." That is where the discretion ought to be. It ought to be at the local level. I don't think that we ought to mandate more communities throughout the state that they have to put manufactured housing anywhere within their boundaries.

SENATOR BASS: I rise in opposition to the floor amendment to SB 317. This in essence is zoning by soil type. I would like to point out that the amendment indicates that the manufactured housing would have to conform with the U. S. Department of Urban Housing Development Building Code, but 67431, contains a definition which is quite different. Manufactured Housing in 67431 means any structure transportable in one or more sections which in the traveling mode is eight feet wide and forty feet more in length or when erected on site is three twenty square feet or more in which is built on a permanent chassis and designed to be used as a dwelling and so on and so forth. I think that the passage of this amendment would raise some serious questions as to what prevails, a reference to a building code or a specific section and definition which probably should be repealed if we are going to refer to a building code. As Senator Shaheen has pointed out so aptly, the existing paragraph which has already been amended three times in the 1980's, already allows or requires that towns and cities permit manufacturing housing on individual lots essentially to the same extent as any other housing. What this bill basically does is give manufactured housing a preference over other types of housing, and it establishes a statewide zoning precedence for this particular type of housing. I certainly recognize the good intentions of those individuals who wish to provide affordable housing, but this particular bill is in my opinion, a special interest amendment which will give one form of housing precedence over any other form of housing precedence and I urge the Senate to reject this amendment.

SENATOR HEATH: I rise in favor of this, and I am absolutely dumbfounded at all of these heros of the poor that have paraded around here for I don't know how many years talking about how they want to help the underdog and help the underprivileged and then come in here with dental programs and everything and then you want to stick these people in wooden tenement buildings and let them flame out when every once in awhile one gets drunk and torches the place. This is the first step housing for many people, young couples, poor people who just lost their homes because they lost their jobs and you people don't want them in your damn neighborhoods. I am in shock and a little bit ashamed that you people

would rise to such a level of hypocrisy that you could turn down this piece of legislation. I guess I don't want to say anymore because I may get angrier.

Senator St. Jean moved the question.

Adopted.

A roll call requested by Senator Heath.

Seconded by Senator W. King.

Recess.

Out of recess.

The following Senators voted Yes: Oleson, W. King, Heath, Currier, Disnard, Colantuono, J. King, St. Jean.

The following Senators voted No: Fraser, Hough, Roberge, Bass, Pressly, Nelson, McLane, Podles, Russman, Shaheen, Delahunty, Hollingworth, Cohen.

Yeas 8

Nays 13

Floor amendment failed.

Question is on ought to pass.

Motion fails.

Senator Bass moved inexpedient to legislate.

Adopted.

SB 317 is inexpedient to legislate.

Senator Bass in opposition to SB 317.

SENATOR PODLES: Thank you, Mr. President and Senators. Senate Resolution 3 request that Governor Gregg proclaim Labor Day of 1992, September 7 officially declared help yourself buy American day. Copies of this resolution be transmitted to the Governor and the national conference of state legislatures, the American legislative exchange council, the council of state governments and the state legislative leaders foundations so that every state in the nation may be encouraged to legislatively approve this help yourself buy American effort. This resolution seeks to encourage consumers to purchase American made products to help reinvigorate American businesses and increase employment opportunities. It is just simply an effort to inform consumers on the important role that they can play in helping themselves, and I urge passage of this resolution.

Senator Podles offered a resolution.

**SR 3**, proclaiming Labor Day 1992 as “Help Yourself—Buy American Day”.

**SR 3**

**STATE OF NEW HAMPSHIRE**

In the year of Our Lord one thousand  
nine hundred and ninety-two

**A RESOLUTION**

Proclaiming Labor Day 1992 as “Help Yourself—Buy American Day”.

Whereas, the current recession facing New Hampshire and the nation has cost many Americans their jobs and has caused economic stress for all of America’s citizens and their families; and

Whereas, American companies are manufacturing superior merchandise at competitive prices with heightened productivity; and

Whereas, when an American consumer purchases an American product, the nation’s economy is stimulated, creating increased employment opportunities and economic growth; and

Whereas, the plight of jobless workers in America is in part due to American consumers not specifying a need to purchase quality merchandise produced in the United States; and

Whereas, Americans and New Hampshire citizens can help rein-vigorate their economies by purchasing quality products made by the American worker; and

Whereas, the President of the United States and Congress have been actively working to expand manufacturing in this country by encouraging the purchase of American-made products; and

Whereas, the states can and should play an important role in promoting this effort; now, therefore be it

Resolved by the Senate:

That the New Hampshire Senate pause in its deliberations to request Governor Gregg to proclaim that Labor Day of 1992, September 7, be officially declared “Help Yourself-Buy American Day” in the state of New Hampshire and that on such day and on all subsequent days, New Hampshire citizens pay tribute to the American worker by making a conscious effort to purchase American-made merchandise;

That this effort should be aggressively advanced as a nation-wide program by every state legislature so that Labor Day 1992 can be celebrated throughout the nation to motivate American consumers to purchase quality American-made products wherever and whenever possible; and

That copies of this resolution be transmitted to the Governor and National Conference of State Legislatures, the American Legislative Exchange Council, the Council of State Governments and the

State Legislative Leaders Foundation so that every state in the nation may be encouraged to legislatively approve this "Help Yourself-Buy American" effort.

Adopted.

### TAKEN OFF THE TABLE

Senator Disnard moved to have SB 390, an act establishing a revenue estimating conference which shall estimate anticipated state revenues, taken off the table.

Adopted.

**SB 390**, an act establishing a revenue estimating conference which shall estimate anticipated state revenues. Internal Affairs committee. Senator Disnard for the committee.

**SENATOR DISNARD:** The floor amendment is being passed out. This bill was tabled because the floor amendment was not available when the bill was in the calendar. Most of you know the bill as amended. I would like to point out that pages nine through eleven are just current law. Pages one through eight are the supporting part of the bill and I would like to point out that this is only a revenue estimating bill. This has nothing to do with how revenues are raised. It is just a revenue estimating bill. We should have such a committee now because very soon the legislature will need to make tough choices for 1994 and 1995. We need to make tough choices early, not down the road. We are still adding our debt, we have used our rainy day fund, we have bonded money for the LCIP, I think it was \$20,000,000. The medicaid money is soon running out and yet we are still looking at another \$59,000,000 supplemental budget on top of the \$38,000,000 which is coming across from the house. All this bill does is establish a means to estimate revenue. We all know that the public does not have any confidence in the method in which the legislature estimates revenue. This bill indicates what the committee will be. The committee will have four members called principals, the Governor, the President of the Senate, the Speaker of the House or their respective designees and a facility member with revenue and economic forecasting experience from a public or private university or college in the state of New Hampshire. I was very pleased to listen and hear today that the economic development members were strongly urging that the academic area be involved in economic development, and I am assuming that this is the same idea. Now this committee will have to meet four times a year and

there will be an estimating conference, there shall be an official estimate of anticipated state revenues for each fiscal year. Now you will notice on page five, that each year the committee conference, known as the committee again, will publish an official estimate of anticipated state revenues for the current and the upcoming fiscal years which shall be utilized by the executive branch in the formation of any budget setting that puts forth for each fiscal year. The committee will then, the second time, it shall revise the official estimate of anticipated state revenues for the current and upcoming fiscal year by January 7. A third review will be revised if necessary, of anticipated state revenues the last day of March. These estimates shall be utilized by the legislature of its adoption of any state biennial or supplementary budget. The fourth and final revision shall be by the legislature at each regular session, but not later than August 15. So now we have four times during the year that the revenue estimate conference would be established. I wish to call your attention, it does not enter into any of the executive branch prerogatives in developing its budget. It does do something that I think that you should take a look at on page eight, II. If at any time during the fiscal year, a conference acts to revise the official estimate of anticipated state revenues for the fiscal year downwards, so that a budget deficit is likely to occur, the conference shall immediately notify the Governor of any such action and he may reduce all expenditures as well as future request for appropriations. In order to prevent expenditures or appropriations from exceeding the official estimate of the anticipated state revenues for the fiscal year, the Governor may order reductions of expenditures in any department or departments with the prior approval of the Fiscal Committee. This doesn't eliminate the Fiscal Committee as provided in RSA as listed. No order by the Governor under this paragraph to reduce the rate of expenditures shall exceed five percent of the total general fund appropriation for any department. Now I think that this is needed. I think that we have to have some type of revenue estimate that has some validity to it, that has the academic areas involved. And you will notice that there is also a place on page three, a section on page three where participants, people other than the principals or the members of the committee will be invited to participate. The many times the state of Massachusetts is reviewed, and people make comments and laugh, and I would like to come in, and I think that many people here understand from the news media Governor Wells has utilized this type of revenue estimating and they are beginning to turn themselves around. I hope that you will look with favor on this, pass it and have the House take a good look at it and see if it is reasonable and I think it responsible.

Senator Disnard offered a floor amendment.

**5104L**

**Floor Amendment to SB 390**

Amend the bill by replacing all after the enacting clause with the following:

1 Duties of Director of the Budget. RSA 4:12-c, II is repealed and reenacted to read as follows:

II. He shall assist and advise the governor in the preparation of any executive branch budget, as provided in RSA 9:9-a - 9:9-k.

2 New Subdivision; Revenue Estimating Conference and Preparation of Budget. Amend RSA 9 by inserting after section 9 the following new subdivision:

**The Budget**

9:9-a Declaration of Purpose. In order to provide a more stable and accurate method of financial planning and budgeting, as well as to facilitate the adoption of sound fiscal policies in the creation of a balanced state budget, it is hereby declared the intention of the legislature, beginning with the executive budget to be presented for the 1994-95 biennium, that there be a procedure for the determination of an official estimate of anticipated state revenues, upon which the executive budget, as required by RSA 9:9-g, shall be based as provided for in this chapter.

9:9-b Definitions. In this subdivision:

I. "Budget reconciliation act" means the act used by the executive branch to bring each biennial budget into balance.

II. "Official estimate of anticipated state revenues" means the total amount of general fund, fish and game fund, highway fund, and sweepstakes revenue for the ensuing biennium, based upon current taxes and current tax rates.

III. "Official information" means the data, forecasts, estimates, analyses, studies, and other information which the principals of the revenue estimating conference adopt for the purpose of the state planning and budgeting system through a process to be decided by the principals.

IV. "Revenue estimating conference", hereafter also referred to as the conference, means the conference of the principals and the participants which shall determine the official estimate of anticipated state revenues.

9:9-c Membership of Revenue Estimating Conference.

I. The membership of the conference shall consist of principals and participants. The following members shall be considered to be principals: the governor, the president of the senate, the speaker of



the house of representatives, or their respective designees, and a faculty member with revenue and economic forecasting experience from a public or private university or college in the state of New Hampshire selected by the 3 other principals of the conference from a list of 5 submitted by the New Hampshire College and University Council, all of whom shall serve as principals of the conference. Not more than 3 principals, however, shall be members of the same political party.

II.(a) A principal shall preside over conference sessions, convene conference sessions, request information, specify topics to be included on the conference agenda, and agree or withhold agreement on whether information is to be official information of the conference.

(b) A participant shall be any person who is invited to participate in the conference by a principal. A participant shall, at the request of any principal before or during any session of the conference, develop alternative forecasts, collect and supply data, perform analysis, or provide other information needed by the conference. The conference shall consider information provided by participants in developing the official information.

III. The responsibility of presiding over the conference shall be rotated annually among the elected officials or their designees. The principals shall elect the initial chairman from among themselves and thereafter the chairmanship shall rotate among the principals annually. The rotation schedule shall be determined by a majority vote of the principals. No principal shall serve as chairman more than once every 3 years.

IV. Copies of workpapers, minutes, and all other official information shall be kept with the legislative budget assistant, as well as with the department of revenue administration. The responsibility for distributing workpapers as provided for in paragraph V shall rest with the chairman, and the support staff shall come from the branch of government in which the chairman serves.

V. The chairman who is responsible for presiding over a session of the conference shall be responsible for preparing and distributing the necessary workpapers prior to that session of the conference. Any principal may cancel a meeting of the conference if such workpapers have not been distributed prior to the meeting. The workpapers shall include comparisons between alternative information where such comparisons are warranted.

#### 9:9-d Duties of Revenue Estimating Conference.

I. There shall be an official estimate of anticipated state revenues for each fiscal year which shall be determined and revised by the principals of the conference. The conference may utilize whatever staff, information, and technical expertise which it may deter-

mine is required to derive or revise the official estimate of anticipated state revenues. The conference may request and shall receive from all public officers, departments, and establishments of the state and its political subdivisions such assistance and data as will enable the conference to fulfill its duties. Each estimate of the department of resources and economic development's expenditure requirements shall include sufficient appropriations for the inspection, monitoring and maintenance of the "Old Man of the Mountain." The official estimate of anticipated state revenues shall be published as a public document and shall contain a statement of economic assumptions and any other factors upon which it is based. The official estimate of anticipated state revenues shall be derived and based upon the assumption that the current law and current administrative procedures shall remain in effect for the fiscal year being considered.

II. The official estimate of anticipated state revenues shall be determined by the conference through a process to be decided by the conference, except that any final action establishing an official estimate of anticipated state revenues shall be taken only pursuant to a unanimous decision by all of the conference principals.

III. The conference shall release official information of the conference, interpret said information, and monitor errors in official information of the conference.

9:9-e Public Meetings. All sessions of the conference shall be open to the public and shall comply with the provisions of RSA 91-A. Once assembled for the purpose of providing an official estimate of anticipated state revenues, the conference members shall not meet privately until such time as an official revenue estimate has been established.

9:9-f Schedule of Sessions for Revenue Estimating Conference.

I. The conference shall meet at least 4 times during each calendar year as follows:

(a) By October fifteenth of each year the conference shall publish an official estimate of anticipated state revenues for the current and the ensuing fiscal years, which shall be utilized by the executive branch in the formulation of any budget setting forth its financial program for each of the fiscal years of the ensuing biennium, any supplemental budget, or any budget reconciliation act.

(b) The conference shall revise the official estimate of anticipated state revenues for the current and the ensuing fiscal years by January 7, which shall be utilized in the preparation of any executive branch budget, as provided in subparagraph I(a).

(c) The conference shall revise the official estimate of anticipated state revenues for the current and the ensuing fiscal years by the last day of March, which shall be utilized by the legislature in its

adoption of any state biennial or supplemental budget. This revision shall include an estimate by the conference of the state revenues available for appropriation. The appropriation from state revenues contained in any proposed biennial or supplemental budget, as well as the final enactment of the current biennial budget, shall not exceed the official estimate of anticipated state revenues. In the event legislation becomes law which affects tax or fee revenue, the conference shall revise the estimate of anticipated state revenues for the ensuing fiscal year revenues available for appropriation. Appropriations by the legislature shall not exceed the official estimate of anticipated state revenues.

(d) Subsequent to the final adjournment of each regular session of the legislature, but in any event not later than August 15 of each year, the conference shall release a final revised official estimate of anticipated state revenues for the current fiscal year which shall incorporate all revenue impacts resulting from legislation enacted during the past regular legislative session, which shall be used to determine a need for any corrective action in the current state operating budget. The data and official estimate shall be published in the state's comprehensive annual financial report.

II. If at any time at least 2 principals of the conference issue written notification that they are of the opinion that current conditions warrant a possible revision of the most recently released estimate, then a meeting of the conference shall be held for purposes of such consideration.

9:9-g Contents and Format of Executive Budgets for Each Fiscal Year.

I. The governor shall cause to be prepared an executive budget presenting a complete financial plan for each fiscal year for the ensuing biennium prepared in accordance with generally accepted accounting principals and based only upon the most recent official estimate of anticipated state revenues as determined by the revenue estimating conference. The executive budget shall be prepared after the passage of the appropriation and revenue acts in the preceding legislative session, but not later than October 1 of each year. The budget so prepared shall include all the details of the financial plan for each fiscal year of the ensuing biennium, as to both expenditures and means of financing.

II. When the budget has been so prepared, the governor shall cause it to be printed or otherwise duplicated. Copies of the state budget shall be distributed to the legislature and the heads of the state departments, and a reasonable number of copies shall be kept available for public distribution.

III. Not later than 60 days after the final adjournment of any special legislative session the governor shall cause to be prepared an update of the state budget required by this section, which shall incorporate any revisions necessary as to expenditures or means of financing of the state budget which resulted from actions taken during such special legislative session.

IV. Any proposals by the governor to enhance revenues for the ensuing fiscal year beyond those estimated to be available from the current law and administrative procedures, as determined by the revenue estimating conference, shall be itemized and projected separately and shall constitute a submission by the governor separate and apart from the executive budget. Any such submission shall include a description of the proposed uses and programmatic impacts of the enhanced revenues.

9:9-h Program Appropriation Unit Format. All budgets provided for by this subdivision shall be in program appropriation unit format as first employed by the 1973 general court. For expository purposes, the budget may be presented as a summarized 3 class line document consisting of personnel services, operating expenses, and other expenses; provided, however, that the final budget as passed and the warrants issued by the commissioner of administrative services shall be classified into the following classes as appropriate: personnel services, current expense, equipment, other personnel services, benefits, travel in-state, travel out-of-state, and other expenditures.

9:9-i Use of Official Estimate of Anticipated State Revenues.

I. At no time shall appropriations or expenditures for any fiscal year exceed the official estimate of anticipated state revenues for that fiscal year.

II. If at any time during the fiscal year the conference acts to revise the official estimate of anticipated state revenues for the current fiscal year downward so that a budget deficit is likely to be incurred, the conference shall immediately notify the governor of such action, and he may reduce all expenditures as well as future requests for appropriations. In order to prevent expenditures or appropriations from exceeding the official estimate of anticipated state revenues for the fiscal year, the governor may order reductions in the rate of expenditure in any department or departments with the prior approval of the fiscal committee, as provided in RSA 9:16-b, I. No order by the governor under this paragraph to reduce the rate of expenditure shall exceed 5 percent of the total general fund appropriation for any department for the fiscal year in which the reduction is ordered.

9:9-j Judicial Branch Budget. The supreme court, the superior court, and the probate judges shall prepare their own budgets and the budgets of their respective components, which they shall deliver to the chief justice of the supreme court for transmittal to the speaker of the house, the president of the senate, the house appropriations committee, and the senate finance committee, for review and processing by the legislature according to the same time schedule for budgetary review and analysis required of executive agencies. A copy of said transmittal shall be forwarded to the superior court and probate judges. The judicial branch budgets shall be prepared upon forms and according to procedures prescribed by the commissioner of administrative services. The budget request documents and such additional information as may be requested shall be submitted to the governor to be included in the executive budget as part of the information required under RSA 9:9-g in the amounts requested, and with such comments as the governor deems appropriate.

9:9-k Capital Expenditure Requests.

I. A separate process, as provided in this section, shall be used to adopt the capital budget, and the provisions of RSA 9:9-a - 9:9-j relative to the revenue estimating conference shall not apply. All departments seeking funds for capital expenditures shall submit their requests to the commissioner of administrative services no later than the May 1 before the opening of the biennial legislative session. Requests shall be made on forms supplied by the commissioner of administrative services. Each request shall list estimates of the costs of land, construction, furnishings, and equipment. In addition, each request shall include the square footage, estimates of annual operating and maintenance costs, program descriptions, and number of people involved.

II. The commissioner of administrative services shall submit a summary of the requests and any supporting detail to the governor by May 31.

III. The governor shall hold public hearings on the requests no later than June 30. He may require officials of those departments submitting requests to attend and testify.

IV. There shall be a governor's advisory committee on the capital budget consisting of the following, or their designees: commissioner of administrative services, commissioner of transportation, chairman of the senate capital budget committee, and chairman of the house public works committee. Members of the advisory committee may attend the hearings on capital budget requests, question those testifying, and contribute their opinions.

V. The governor shall select those projects which he considers worthy of further evaluation, and send the requests for the selected projects to the commissioner of transportation no later than August 1. The governor may hold additional hearings on capital requests at the time of the operating budget hearings. If any additional hearing is held after election day, the governor shall invite the governor-elect to attend.

VI. The commissioner of transportation shall prepare schematic drawings, cost estimates, and program descriptions and present these, along with any recommendations, to the governor no later than December 1.

VII. The governor shall submit the capital budget to the general court no later than February 15 of each odd-numbered year.

9:9-1 Information Technology Plan. Each executive department shall prepare an information technology plan in accordance with the information technology planning process developed by the director of the office of information technology management. The portion of each plan which addresses the upcoming biennium shall define the capital and executive budgets necessary for implementing the plan. The budget data in the information technology plan shall provide for both new information technology initiatives and existing operations and shall be submitted to the governor to be included in the executive budget as part of the information required under RSA 9:9-g. In the case of the failure of any executive department to submit an information technology plan, the director of information technology management shall cause a plan to be prepared as in his opinion is reasonable and proper.

3 Duties of Legislative Budget Assistant; Reference Change. Amend RSA 14:31-b, II to read as follows:

II. The legislative budget assistant shall attend all hearings on [state budgets as provided for in RSA 9:7] **the executive budget as shall be necessary under the provisions of RSA 9:9-a - 9:9-k.**

4 Allowance for Governor's Councilors; Reference Change. Amend RSA 94:1-b to read as follows:

94:1-b Method of Determining Per Diem Allowance for Governor's Councilors. When the compensation of governor's councilors is expressed in terms of an annual salary, such salary shall be divided by 52 to determine the per diem allowance for governor's councilors for the purposes of [RSA 9:7] **determining the executive budget under RSA 9** or any other purpose.

5 Repeal. The following are repealed:

I. RSA 4:12-c, III, relative to formulating the budget.

II. RSA 9:2-9:9, relative to the budget.

6 Effective Date. This act shall take effect 60 days after its passage.

Floor amendment adopted.

Ordered to third reading.

### **TAKEN OFF THE TABLE**

Senator Hough moved that we have SB 436 relative to aid to the permanently and totally disabled and the property tax exemption for the blind, taken off the table.

Adopted.

**SB 436**, relative to aid to the permanently and totally disabled and the property tax exemption for the blind. Public Institutions, Health and Human Services committee. Senator J. King for the committee.

**SENATOR J. KING:** SB 436 was passed by this group about a week ago and we have decided to make a change in the method of setting the exemptions for the totally blind. At the present time it is \$15,000 that shall be done. We have added with the new amendment, and a city or town may exempt any amount and may determine as is appropriate to address significant increases in property values. It doesn't say that they shall, it says that they may. In the cities and towns where there has been a significant increase in property values, the town may address what would be appropriate for those totally disabled because of being blind. That basically is the only change. In fact, prior to this they could give up to \$35,000 and one of them recommended that they would rather have their own lead way. It is 'may', it is not a mandate either. Thank you.

Senator J. King offered a floor amendment.

**5331L**

### **Floor Amendment to SB 436-FN-LOCAL**

Amend the title of the bill by replacing it with the following:

#### **AN ACT**

relative to aid to the permanently and totally disabled  
and the property tax exemption for the blind.

Amend the bill by replacing all after section 1 with the following:  
2 Exemption for the Blind. Amend RSA 72:37 to read as follows:

72:37 Exemption for the Blind. Every inhabitant who is legally blind as determined by the blind services department of the vocational rehabilitation division of the education department shall be exempt each year on the assessed value, for property tax purposes, of his or her residential real estate to the value of \$15,000, **and a city or town may exempt any amount it may determine is appropriate**

**to address significant increases in property values.** The term “residential real estate” as used in this section shall mean the same as defined in RSA 72:29. All applications made under this section shall be subject to the provisions of RSA 72:33 and RSA 72:34.

3 Effective Date. This act shall take effect 60 days after its passage.

### AMENDED ANALYSIS

This bill allows persons to retain the aid they receive from aid to the permanently and totally disabled, regardless of their medicaid eligibility, through any administrative and judicial processes, until a final determination is made on their social security eligibility.

This bill also authorizes cities and towns to raise the tax exemption for legally blind persons to address significant increases in property values.

SENATOR PODLES: I support this amendment for the \$15,000 and the city or towns that they may determine whatever is appropriate to address the increase. A lot of my constituency has called me from the city of Manchester since we had the re-evaluation and the legally blind really got short changed this year and this will correct whatever they lost out on and I urge passage of this amendment.

SENATOR MCLANE: Senator King, I just want to be sure that this is an optional additional exemption? That the local community can make that decision?

SENATOR J. KING: The cities and towns and the government itself may, it doesn't say that they shall do it, it says that they 'may' do it, but the \$15,000, that is shall and has been shall and remains shall.

Floor amendment adopted.

Ordered to third reading.

### TAKEN OFF THE TABLE

Senator Colantuono moved that we have SB 452-FN-LOCAL, an act redistricting certain district courts, taken off the table.

Adopted.

Recess.

Out of recess.

**SB 452-FN-LOCAL**, an act redistricting certain district courts. Judiciary committee. Ought to Pass with Amendment. Senator Colantuono for the committee.

SENATOR COLANTUONO: This bill was a product of a lengthy study committee designed to consolidate a number of district courts. I don't have my notes with me from the original floor action, but I



believe that it reduces the number of district courts in this state from a number in the forties to a number in the mid 30's. It substantially consolidates some courts that exist in some towns and cities that are very close together within a five or ten mile distance, and that happens in a number of places around the state. The important thing to remember here is that none of these consolidations will take place until a new facility is either renovated, purchased or built that meets the court accreditation requirements of the Court Accreditation Commission. So that there will be no changes in those districts that don't have a facility that meets that standard. The district courts in those towns will continue to exist in those separate towns. I don't know if that satisfies the concerns of some of the Senators who want to put a floor amendment in, but that is an important part of the bill which is contained in paragraph four of the committee amendment. The committee amendment did a couple of minor things to the original bill. It dealt with a concern for Pittsfield. We took the consolidation for Pittsfield into Concord out of the bill. It dealt with an error in the bill which left a sitting of the Merrimack district court in Bedford which was not intended to be in there. It dealt with the Pelham court by leaving that court open one day a week as a sitting as a session of the Salem district court. So with those changes, the committee unanimously recommends the amendment to be passed.

**5040L**

### **Amendment to SB 452-FN-LOCAL**

Amend the bill by replacing all after the enacting clause with the following:

1 Redistricting of District Courts. RSA 502-A:1 is repealed and reenacted to read as follows:

502-A:1 Judicial Districts. A comprehensive system of judicial districts, each with a district court, is hereby organized, constituted and established as follows:

#### **Rockingham County**

I. PORTSMOUTH DISTRICT. The Portsmouth district shall consist of the city of Portsmouth and the towns of Newington, Greenland, Rye, and New Castle. The district court for the district shall be located in Portsmouth, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be Portsmouth District Court.

II. HAMPTON-EXETER DISTRICT. The Hampton-Exeter district shall consist of the towns of Hampton, Hampton Falls, North Hampton, South Hampton, Seabrook, Exeter, Newmarket, Stratham, Newfields, Fremont, East Kingston, Kensington, Epping,

and Brentwood. The court shall be located in a city or town within the judicial district in a location and facility designated pursuant to RSA 490-B:3, having regard for the convenience of the communities within the district, provided, however, that the court shall not be located in any building which does not meet the minimum standard prescribed by the New Hampshire court accreditation commission pursuant to RSA 490:5-c. The court shall bear the name of the city or town in which it is located.

III. DERRY DISTRICT. The Derry district shall consist of the towns of Derry, Londonderry, Chester, and Sandown. The district court for the district shall be located in Derry, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be Derry District Court.

IV. AUBURN DISTRICT. The Auburn district shall consist of the towns of Auburn, Candia, Deerfield, Nottingham, Raymond, and Northwood. The district court for the district shall be located in Auburn, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be Auburn District Court.

V. SALEM DISTRICT. The Salem district shall consist of the towns of Salem and Windham in Rockingham county and the town of Pelham in Hillsborough county. The district court for the district shall be located in Salem, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be Salem District Court.

VI. PLAISTOW DISTRICT. The Plaistow district shall consist of the towns of Plaistow, Hampstead, Kingston, Newton, Atkinson, and Danville. The district court for the district shall be located in Plaistow, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be Plaistow District Court.

### **Strafford County**

VII. DOVER-SOMERSWORTH-DURHAM DISTRICT. The Dover-Somersworth -Durham district shall consist of the cities of Dover and Somersworth and the towns of Rollinsford, Durham, Lee, and Madbury. The court shall be located in a city or town within the judicial district in a location and facility designated pursuant to RSA 490-B:3, having regard for the convenience of the communities within the district, provided, however, that the court shall not be located in any building which does not meet the minimum standard prescribed by the New Hampshire court accreditation commission pursuant to RSA 490:5-c. The court shall bear the name of the city or town in which it is located.

VIII. ROCHESTER DISTRICT. The Rochester district court shall consist of the city of Rochester and the towns of Barrington, Milton, New Durham, Farmington, Strafford, and Middleton. The district court for the district shall be located in Rochester, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be Rochester District Court.

### **Belknap County**

IX. LACONIA DISTRICT. The Laconia district shall consist of the city of Laconia and the towns of Meredith, New Hampton, Gilford, Belmont, Alton, Gilmanton and Center Harbor. The district court for the district shall be located in Laconia, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be Laconia District Court.

### **Carroll County**

X. CONWAY DISTRICT. The Conway district shall consist of the towns of Conway, Bartlett, Jackson, Eaton, Chatham, Hart's Location, Albany, Madison and the unincorporated places of Hale's Location, Cutt's Grant, Hadley's Purchase, and Livermore. The district court for the district shall be located in Conway, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be Conway District Court.

XI. OSSIPEE-WOLFEBORO DISTRICT. The Ossipee-Wolfeboro district shall consist of the towns of Ossipee, Tamworth, Freedom, Effingham, Wakefield, Wolfeboro, Brookfield, Tuftonboro, Moultonborough, and Sandwich. The court shall be located in a city or town within the judicial district in a location and facility designated pursuant to RSA 490-B:3, having regard for the convenience of the communities within the district, provided, however, that the court shall not be located in any building which does not meet the minimum standard prescribed by the New Hampshire court accreditation commission pursuant to RSA 490:5-c. The court shall bear the name of the city or town in which it is located.

### **Merrimack County**

XII. CONCORD DISTRICT. The Concord district shall consist of the city of Concord, and the towns of Loudon, Canterbury, Dunbarton, Bow, and Hopkinton. The district court for the district shall be located in Concord, holding sessions regularly there and elsewhere in the district as justice may require. The name of the court shall be Concord District Court.

**XIII. HOOKSETT DISTRICT.** The Hooksett district shall consist of the towns of Allenstown, Pembroke, and Hooksett. The district court for the district shall be located in Hooksett, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be the Hooksett District Court.

**XIV. FRANKLIN DISTRICT.** The Franklin district shall consist of the city of Franklin and the towns of Northfield, Danbury, Andover, Boscawen, Salisbury, Hill, and Webster in Merrimack county and the towns of Sanbornton and Tilton in Belknap county. The district court for the district shall be located in Franklin, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be Franklin District Court.

**XV. HENNIKER-HILLSBOROUGH DISTRICT.** The Henniker-Hillsborough district shall consist of the towns of Henniker, Warner, and Bradford in Merrimack county and the towns of Hillsborough, Deering, Windsor, Antrim and Bennington in Hillsborough county. The court shall be located in a city or town within the judicial district in a location and facility designated pursuant to RSA 490-B:3, having regard for the convenience of the communities within the district, provided, however, that the court shall not be located in any building which does not meet the minimum standard prescribed by the New Hampshire court accreditation commission pursuant to RSA 490:5-c. The court shall bear the name of the city or town in which it is located.

**XVI. NEW LONDON DISTRICT.** The New London district shall consist of the towns of New London, Wilmot, Newbury, and Sutton. The district court for the district shall be located in New London, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be New London District Court.

**XVII. PITTSFIELD DISTRICT.** The Pittsfield district shall consist of the towns of Pittsfield, Chichester, and Epsom in Merrimack county and the town of Barnstead in Belknap county. The district court for the district shall be located in Pittsfield, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be Pittsfield District Court.

### **Hillsborough County**

**XVIII. MANCHESTER DISTRICT.** The Manchester district shall consist of the city of Manchester. The district court for the district shall be located in Manchester, holding sessions regularly therein as justice may require. The name of the court shall be Manchester District Court.

**XIX. NASHUA DISTRICT.** The Nashua district shall consist of the city of Nashua and the towns of Hudson, Hollis, and Litchfield. The district court for the district shall be located in Nashua, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be Nashua District Court.

**XX. MERRIMACK DISTRICT.** The Merrimack district shall consist of the towns of Merrimack and Bedford. The district court for the district shall be located in Merrimack, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be the Merrimack District Court.

**XXI. MILFORD DISTRICT.** The Milford district shall consist of the towns of Milford, Brookline, Amherst, Mason, Wilton, Lyndeborough, and Mont Vernon. The district court for the district shall be located in Milford, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be Milford District Court.

**XXII. JAFFREY-PETERBOROUGH DISTRICT.** The Jaffrey-Peterborough district shall consist of the towns of Peterborough, Hancock, Greenville, Greenfield, New Ipswich, Temple, and Sharon in Hillsborough county and the towns of Jaffrey, Dublin, Fitzwilliam, Troy, and Rindge in Cheshire county. The district court for the district shall be located in Jaffrey or Peterborough, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be Jaffrey-Peterborough District Court.

**XXIII. HENNIKER-HILLSBOROUGH DISTRICT.** The Henniker-Hillsborough district shall consist of the towns of Henniker, Warner, and Bradford in Merrimack county and the towns of Hillsborough, Deering, Windsor, Antrim and Bennington in Hillsborough county. The court shall be located in a city or town within the judicial district in a location and facility designated pursuant to RSA 490-B:3, having regard for the convenience of the communities within the district, provided, however, that the court shall not be located in any building which does not meet the minimum standard prescribed by the New Hampshire court accreditation commission pursuant to RSA 490:5-c. The court shall bear the name of the city or town in which it is located.

**XXIV. GOFFSTOWN DISTRICT.** The Goffstown district shall consist of the towns of Goffstown, Weare, New Boston, and Frances-town. The district court for the district shall be located in Goffstown, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be Goffstown District Court.

### **Cheshire County**

**XXV. KEENE DISTRICT.** The Keene district shall consist of the city of Keene and the towns of Stoddard, Westmoreland, Surrey, Gilsum, Sullivan, Nelson, Roxbury, Marlow, Swanzey, Marlborough, Winchester, Richmond, Hinsdale, Harrisville, Walpole, Alstead, and Chesterfield. The district court for the district shall be located in Keene, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be Keene District Court.

**XXVI. JAFFREY-PETERBOROUGH DISTRICT.** The Jaffrey-Peterborough district shall consist of the towns of Jaffrey, Dublin, Fitzwilliam, Troy, and Rindge in Cheshire county and the towns of Peterborough, Hancock, Greenville, Greenfield, New Ipswich, Temple, and Sharon in Hillsborough county. The district court for the district shall be located in Jaffrey or Peterborough, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be Jaffrey-Peterborough District Court.

### **Sullivan County**

**XXVII. CLAREMONT-NEWPORT DISTRICT.** The Claremont-Newport district shall consist of the city of Claremont and the towns of Cornish, Unity, Charlestown, Acworth, Langdon, Plainfield, Newport, Grantham, Croydon, Springfield, Sunapee, Goshen, Lempster, and Washington. The court shall be located in a city or town within the judicial district in a location and facility designated pursuant to RSA 490-B:3, having regard for the convenience of the communities within the district, provided, however, that the court shall not be located in any building which does not meet the minimum standard prescribed by the New Hampshire court accreditation commission pursuant to RSA 490:5-c. The court shall bear the name of the city or town in which it is located.

### **Grafton County**

**XXVIII. HANOVER-LEBANON DISTRICT.** The Hanover-Lebanon district shall consist of the towns of Hanover, Orford, Lyme, Lebanon, Enfield, Canaan, Grafton, and Orange. The court shall be located in a city or town within the judicial district in a location and facility designated pursuant to RSA 490-B:3, having regard for the convenience of the communities within the district, provided, however, that the court shall not be located in any building which does not meet the minimum standard prescribed by the New

Hampshire court accreditation commission pursuant to RSA 490:5-c. The court shall bear the name of the city or town in which it is located.

**XXIX. HAVERHILL DISTRICT.** The Haverhill district shall consist of the towns of Haverhill, Bath, Landaff, Benton, Piermont, and Warren. The district court for the district shall be located in Haverhill, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be Haverhill District Court.

**XXX. LITTLETON DISTRICT.** The Littleton district shall consist of the towns of Littleton, Monroe, Lyman, Lisbon, Franconia, Bethlehem, Sugar Hill, and Easton. The district court for the district shall be located in Littleton, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be Littleton District Court.

**XXXI. PLYMOUTH-LINCOLN DISTRICT.** The Plymouth-Lincoln district shall consist of the towns of Plymouth, Bristol, Dorchester, Groton, Wentworth, Rumney, Ellsworth, Thornton, Campton, Waterville, Ashland, Hebron, Holderness, Bridgewater, Alexandria, Lincoln, and Woodstock. The district court for the district shall be located in Plymouth, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be Plymouth District Court.

### **Coos County**

**XXXII. BERLIN-GORHAM DISTRICT.** The Berlin-Gorham district shall consist of the city of Berlin and the towns of Gorham, Milan, Dummer, Shelburne, and Randolph and the unincorporated places of Cambridge, Success, Bean's Purchase, Martin's Location, Green's Grant, Pinkham's Grant, Sargent's Purchase, and Low and Burbank's Grant. The court shall be located in a city or town within the judicial district in a location and facility designated pursuant to RSA 490-B:3, having regard for the convenience of the communities within the district, provided, however, that the court shall not be located in any building which does not meet the minimum standard prescribed by the New Hampshire court accreditation commission pursuant to RSA 490:5-c. The court shall bear the name of the city or town in which it is located.

**XXXIII. COLEBROOK DISTRICT.** The Colebrook district shall consist of the towns of Colebrook, Pittsburg, Clarksville, Wentworth's Location, Errol, Millsfield, Columbia, Stewarts town, and Stratford and the unincorporated places of Dix's Grant, Atkinson and Gilmanton Academy Grant, Second College Grant, Dixville, Erving's Location, and Odell. The district court for the district shall

be located in Colebrook, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be Colebrook District Court.

XXXIV. LANCASTER DISTRICT. The Lancaster district shall consist of the towns of Lancaster, Stark, Northumberland, Carroll, Whitefield, Dalton and Jefferson, and the unincorporated places of Kilkenny Bean's Grant, Chandler's Purchase, Crawford's Purchase, and Thompson and Meserve's Purchase. The district court for the district shall be located in Lancaster, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be Lancaster District Court.

2 District Court Justices; Tenure Following Consolidation of Districts. Amend RSA 502-A:3-b to read as follows:

502-A:3-b District Court; Justices, Tenure Following Consolidation of Districts. In those instances in which [2] judicial districts are combined, the justices and special justices of the respective courts shall continue to serve as justices or special justices of the newly created district and the senior justice of the [2 courts] **court** shall be designated the presiding justice of the district, **except where one of the justices is a full-time justice, in which case that justice shall be designated the presiding justice.** Upon the retirement, resignation, disability, or removal of [either] a justice or [either] special justice, the position shall be eliminated [leaving] **until** one justice and one special justice position **remain** for the district.

3 Special Justice; Pelham District Court. Amend 1987, 80:1 to read as follows:

80:1 Special Justice; Pelham Municipal Court. Upon the occurrence of a vacancy in the office of the justice of the Pelham municipal court, the special justice of the Pelham municipal court shall continue in office as a special justice of the [Nashua] **Salem** district court[, as authorized by RSA 502-A:3,] and shall hold sessions in Pelham [as authorized by RSA 502-A:3] **one day per week, notwithstanding the provisions of RSA 502-A:2.**

4 Contingency. Consolidation or redistricting under section 1 of this act shall take effect for each district court only when the facility to be utilized by the newly consolidated or redistricted district is certified as accredited or conditionally accredited by the court accreditation commission.

5 Effective Date.

I. Section 4 of this act shall take effect upon its passage.

II. Sections 1-3 of this act shall take effect January 1, 1993, or when the conditions of section 4 have been met.

Committee amendment adopted.



SENATOR SHAHEEN: I would like to begin, I am proposing a floor amendment to remove the Durham district from the consolidated districts. I would like to preface my remarks with two things. First of all, for those of you who might not know, my husband is the judge in the Durham district court. I did a lot of talking to people and questioning what I ought to do in this circumstance given that if he was financially affected, there would be a clear conflict of interest. I have spoken to the Chief judge of the district courts who headed and was in charge of this effort to consolidate the courts. I have also spoken to two other members of that committee who were attorneys that were involved to try and find out if in fact, that this is going to have any impact on his financial or future status as the judge. They told me then in fact, that it will not, and under our current rule governing conflict of interest, there is no financial stake; therefore, they advised me along with the ethics committee, I have also talked with Senator Bass, that this would not be a conflict. Just to clarify it however, for the future, I have put a form on file in the Clerk's office, clarifying what I was doing today to try and answer any questions should that issue come up. I think that it is important for me to say that very clearly for the Senate so that you understand at the outset what my position is. Secondly, I would like to say that I generally support the idea of court consolidation. I think that it is something that we need to do and it is important to make our courts more efficient and to make them more effective. Dover is part of the consolidation effort, it is also a town in my community and I certainly support the idea of consolidating it with Somersworth; however, Durham, and you can appreciate because my husband is judge there, I have more familiarity with this court than I might otherwise. Durham has about 90 percent of its case load that deals with the university students, maybe a little more than that. I think in handling the university students, there is a particular sensitivity that is required that may not happen if they are put in with a court like Dover and Somersworth where they are dealing basically with a different case load. I would like to read if I can, part of a letter that came from the university police on this issue, because I think that they say it very well. The Chief there says, "We strongly urge that the Durham district court not be combined with any other jurisdiction now or at any other time in the future. The Durham court deals with a multitude of young people, many of whom are university students and has done so with a special quality which clearly demonstrates justice with a caring individual and sensitive manner. The Durham UNH community is in many ways unique and deserves a unique district court." I think that this says it very well. We have a unique population that is dealt with in the district court and I think

that we need to continue to treat them separately. So that is why I have come in with the amendment that would remove Durham, Lee, and Madbury which are currently served by the Durham court from the Dover, Somersworth district.

Senator Shaheen offered a floor amendment.

5284L

### **Floor Amendment to SB 452-FN-LOCAL**

Amend section 1 of the bill by replacing paragraph VII with the following:

**VII. DOVER-SOMERSWORTH DISTRICT.** The Dover-Somersworth district shall consist of the cities of Dover and Somersworth and the town of Rollinsford. The court shall be located in a city or town within the judicial district in a location and facility designated pursuant to RSA 490-B:3, having regard for the convenience of the communities within the district, provided, however, that the court shall not be located in any building which does not meet the minimum standard prescribed by the New Hampshire court accreditation commission pursuant to RSA 490:5-c. The court shall bear the name of the city or town in which it is located.

**VII-a. DURHAM DISTRICT.** The Durham district court shall consist of the towns of Durham, Lee, and Madbury. The district court for the district shall be located in Durham, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be Durham District Court.

Floor amendment adopted.

**SENATOR CURRIER:** I rise for basically the same purpose as Senator Shaheen has, although my wife is not the judge in the Henniker district court. For the same kind of reasons relative to the fact that the college community, New England college and so forth reflects a court that is very much similar to that of the Durham district court. I also have had many constituents who are budget minded and so forth that have had concerns about the consolidations about both courts in terms of these two courts are basically right smack dab in the middle of my region, and it would cost some of the communities larger sums of money to travel to those courts. I ask the Senates approval of separating them from the combination or the combining.

Senator Currier offered a floor amendment.

5332L

**Floor Amendment to SB 452-FN-LOCAL**

Amend RSA 502-A:1, XV as inserted by section 1 of the bill by replacing it with the following:

XV. HENNIKER DISTRICT. The Henniker district shall consist of the towns of Henniker, Warner, and Bradford. The district court for the district shall be located in Henniker, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be Henniker District Court.

Amend RSA 502-A:1, XXIII as inserted by section 1 of the bill by replacing it with the following:

XXIII. HILLSBOROUGH DISTRICT. The Hillsborough district shall consist of the towns of Hillsborough, Deering, Windsor, Antrim and Bennington. The district court for the district shall be located in Hillsborough, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be Hillsborough District Court.

SENATOR HOLLINGWORTH: I am not going to speak against Senator Currier's amendment, I am just going to speak briefly to the body as a member who sat on the committee that worked throughout the summer with Senator Podles and other Representatives from the House. We met on a biweekly basis as you have heard before, and we heard testimony from many, many people and took sections of the state and went on down. It was a very difficult decision when we did these consolidations, and we did have public hearings, and we heard from the people from within those communities. We did try to bring into play what we heard and recognized those concerns. My district which is Hampton and Exeter you see, is also being considered for consolidation. That would make Hampton and Exeter what would be considered a mega-court and one of the largest courts within the system. Many of my constituents do not support the consolidation of Hampton and Exeter, but many of my constituent do. I am not going to try to remove Hampton and Exeter, and I hope that the rest of you will not take the rest of this bill and keep removing sections from it. I would like to speak to part of that reasoning. Many of our courthouses within the state are in total disrepair and the system is broken. If we are ever going to be able to afford to have a court system that we are going to be proud of, we have to take and make some sacrifices individually, even though they might not be what we like personally. So, we have tried very hard to go along with what the communities wanted, but also recognizing the need to save money for the citizens of the state of New Hampshire and also have a up-to-date modern court system that people can get access to and not have to go down the street to the bathroom

or have to have bats in the belfry and rats in the cellar which is the testimony that we heard. One of the things that I would like to have you realize that this bill does not bind future legislative bodies. Nothing can happen to your courts until there is a facility that meets accreditation and also money to buy or to use that facility. So I say to you that what you see here in this bill really is kind of a policy statement, that this is the direction that we need to go. I think that Hampton and Exeter may not, by the time that it comes available, to have a facility be able to be combined because of the size will have grown so large. I do think that that can happen to many of the other courts that you are looking at. Things will change before that time comes. I would hope that each of you will not, because this is a Senate Bill and we have seen so many courts removed that by the time that it gets through the House process, perhaps we won't have any communities left. It is a statement. It is a statement saying we recognize the need to have a system that works.

SENATOR MCLANE: Senator Hollingworth, I am bothered as you are with the lateness of this amendment. I wonder if you had any discussion in the committee of removing the Henniker court from the Hillsborough district court?

SENATOR HOLLINGWORTH: I think that among the committee members and at the public hearing there was ample discussion about that. When the vote was done, you know, it wasn't on the unanimous, it was really what the committee looked at and the majority of the committee would support it. There would be some of the committee that would oppose it. So I mean it is not like we vote here that it ought to pass and that it goes out. It is more or less the consensus of the committee that supports the action.

SENATOR MCLANE: Is the Henniker court an accredited court, that is not the one with the bats in the belfry?

SENATOR HOLLINGWORTH: I don't have the statistics here with me, and I don't recall exactly what the conditions were at the Henniker court. I am not speaking against the amendment, I am just trying to put it on the record why we acted the way that we acted and why we felt that there needed to be a change within the system. That is precisely what my purpose for standing is, to address the body.

SENATOR PODLES: Senator Currier, would you believe that we had a public hearing and that it was put in the calendar, it was put in the newspapers and you did not appear, and neither did anyone from Henniker come to tell us that they didn't want to be in with Hillsborough?

SENATOR CURRIER: Is that a would you believe?

SENATOR PODLES: That was a would you believe. Now here you are at the last minute and you are proposing an amendment.

SENATOR CURRIER: This is not at the last minute. This has been on the table for three weeks. This is the only time that you can bring a floor amendment in, when it gets back off of the table. So how can this be at the last minute?

Floor amendment adopted.

SENATOR W. KING: I am not going to try and remove any other courts and I might add that bats in the belfry mean less mosquitoes in the rest of the building. I am against this bill. I am voting against this bill for a number of reasons, but the most important reason that I am going to vote against this bill is that once again, what the state is doing, is passing its cost to save a little bit of money, it is going to make those small communities in the areas of the courts that we are consolidating pay a larger expense. For example, Gorham will have to add new police officers and pay those who are currently there overtime so that they can make the extra trip up to Berlin. Lincoln will have to do the same thing when they go up to Littleton. In most of these cases, what you are saying is so that we may save some money, we will require the smaller communities in this state that are serviced by these courts to pay far more in the way of property taxes. I cannot support that. So I am voting against this bill and I would encourage others to do the same.

Ordered to third reading.

Senator W. King in opposition to SB 452.

### RECONSIDERATION

Senator McLane, having voted with the prevailing side, moved that we reconsider whereby we ordered of SB 437, relative to the New Hampshire Dental Service Corporation to the third reading and final passage.

Adopted.

**SB 437**, relative to the New Hampshire Dental Service Corporation. Ways and Means committee. Senator McLane for the committee.

SENATOR MCLANE: This amendment comes in with abject apologies from legislative services. When I stood before you last week discussing Delta Dental, our plan was to put this so-called nonprofit insurance organization under the jurisdiction of the insurance commissioner. We, as I stated, did not plan to tax Delta Dental. Inadvertently, the amendment said that Delta Dental would be under all

laws of the insurance commissioner and that unless there is an exception includes taxing them. So for one week these people have worried that we really were going to tax them as we threatened. But in all honesty, we did not mean too. So they are under the insurance commissioner, we don't mean to tax them and the amendment makes clear that we will not tax them.

Senator McLane offered a floor amendment.

5158L

### Floor Amendment to SB 437-FN

Amend the bill by replacing all after the enacting clause with the following:

1 New Hampshire Dental Service Corporation. Amend 1961, 345:3 to read as follows:

345:3 [Non-Profit] **Nonprofit** Status.

**I.** This corporation is not organized and shall not be maintained or operated for private profit or benefit. The income or property of the corporation from whatever source derived shall be applied solely toward the promotion of the purposes of the corporation as above set forth and no portion thereof shall be transferred to or inure to the profit or benefit of any member, officer, director, or employee of the corporation or any individual, provided that nothing herein contained shall prevent the payment in good faith of reasonable remuneration to any member, officer, director or employee of the corporation, or to any other person, or to any participating dentist who has entered into contracts with the corporation to supply dental care, for any services rendered to this corporation or to individuals pursuant to contracts with this corporation for dental care.

**II.** **Contracts between this corporation and its subscribers pursuant to the purposes of this act shall be considered insurance contracts and such contracts shall not be exempt from the provisions of the insurance laws of this state. The New Hampshire Dental Service Corporation shall be considered an insurance company and shall comply with all insurance laws governing such companies excluding RSA 400-A:32.**

2 Effective Date. This act shall take effect January 1, 1993.

### AMENDED ANALYSIS

This bill subjects the New Hampshire Dental Service Corporation to the state insurance laws, except the premium tax.

Floor amendment adopted.

Ordered to third reading.

**RESOLUTION**

Senator Delahunty moved that the rules of the Senate be so far suspended as to allow all bills to be placed on third reading and final passage, all titles be the same as adopted, and that they be passed at the present time.

Adopted.

**RESOLUTION**

Senator Delahunty moved that the Senate be in recess until Thursday, March 19, 1992 at 1:00 p.m. for the sole purpose of introducing legislation, referring bills to committees and scheduling hearings and receiving enrolled bill reports.

Adopted.

**LATE SESSION****Third Reading and Final Passage**

**SB 304-FN-A**, relative to business assistance and institutional arrangements.

**SB 306-FN-A**, an act allowing bonus payments in recognition of service during the Persian Gulf War and making an appropriation therefor.

**SB 308**, an act revising the business corporation act.

**SB 314-FN-A-LOCAL**, an act making a supplemental appropriation for the board of tax and land appeals and increasing filing fees for appeals to the board.

**SB 319**, an act separating the AFDC standard of need from the AFDC payment standard, increasing the AFDC standard of need and increasing medicaid eligibility for pregnant women and children.

**SB 334-FN-A**, an act authorizing the division of public health services to carry out a rabies surveillance to identify and gauge the threat to the public's health and making an appropriation therefor.

**SB 335-FN**, an act authorizing the board of marital mediator certification to establish and collect certification fees, establish a budget and certify certain applicants and continually appropriating a fund.

**SB 339**, an act establishing a committee to study the impact of New Hampshire's product liability laws on manufacturers in New Hampshire.

**SB 351**, an act prohibiting the sale of certain products containing phosphorus.

**SB 367**, an act authorizing the department of resources and economic development to sell the Nansen ski jump facility if no interest exists in the private sector to maintain and operate the facility.

**SB 376-FN**, an act relative to congregate services programs and making an appropriation therefor.

**SB 378**, an act transferring duties under the uniform reciprocal enforcement of support act from county attorneys to the office of child support enforcement services.

**SB 390**, an act establishing a revenue estimating conference which shall estimate anticipated state revenues.

**SB 393**, an act creating a committee to study the feasibility of locating a college in Haverhill, New Hampshire.

**SB 411-FN**, an act relative to special education catastrophic aid.

**SB 414-FN**, an act authorizing a pilot program in one county for investigative services for attorneys providing counsel to indigent defendants.

**SB 429**, an act relative to selecting engineers, architects, and surveyors by state agencies.

**SB 432-FN**, an act relative to motorcycle noise level limits.

**SB 436-FN-L**, an act relative to aid to the permanently and totally disabled.

**SB 437-FN**, relative to the New Hampshire Dental Service Corporation.

**SB 438-FN-A**, an act relative to the department of transportation equipment acquisition revolving fund and making an appropriation therefor and relative to redistributing certain funds within the department of transportation.

**SB 441-FN-A**, an act establishing a statewide enhanced 911 system and continually appropriating a special fund.

**SB 443-FN**, an act requiring the division for children and youth services to develop, implement and administer an automated case management system.

**SB 446-A**, an act authorizing construction of exit 10 on the Spaulding turnpike from bonds previously authorized.

**SB 450**, an act relative to the industrial development authority.

**SB 452-FN-LOCAL**, an act redistricting certain district courts.

**SB 469-FN**, an act relative to retirees' cost of living adjustments, service retirement allowances, and continuing education conferences.



**SB 473-FN-A**, an act relative to a fund for organ transplantation and transferring responsibility from vocational rehabilitation to the division of human services.

Adopted.

Recess.

Out of Recess.

## HOUSE MESSAGE

The House of Representatives has passed the following Bills with the following titles, in the passage of which it asks the concurrence of the Senate.

### INTRODUCTION OF HOUSE BILLS

Senator Delahunty offered the following Resolution:

**RESOLVED**, that in accordance with the list in the possession of the Clerk, House bills numbered 591 through 1473 shall be by this resolution read a first and second time by the therein listed titles, and referred to the therein designated committees.

Adopted.

### First and Second Reading and Referral

**HB 591** - reapportioning the state house of representatives districts. Internal Affairs committee.

**HB 1005** - relative to the reapportionment of house districts within cities and the election of delegates to state party conventions. Internal Affairs committee.

**HB 1153-FN-A** - authorizing the division of human services to assess an administrative fine on employers for failing to comply with an assignment order. Public Institutions, Health and Human Services committee.

**HB 1186-FN** - authorizing the department of fish and game to purchase the Morrill Pond dam and abutting property in the town of Canterbury. Wildlife and Recreation committee.

**HB 1376-FN-L** - requiring the department of environmental services to assume 20 percent of eligible costs of the Conway sewer system project and making an appropriation for costs payments. Capital Budget committee.

**HB 1402-FN** - relative to competitive bidding purchases of services from nonprofit organizations by certain state agencies for severely disabled or emotionally disturbed children. Finance committee.

**HB 1468-FN-L** - relative to special education catastrophic aid. Education committee.

**HB 1473-FN** - establishing a New Hampshire scenic and cultural byways system. Transportation committee.

### HOUSE MESSAGE

The House of Representatives has passed the following Bills with the following titles, in the passage of which it asks the concurrence of the Senate.

### INTRODUCTION OF HOUSE BILLS

Senator Delahunt offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House bills numbered 601 through HCR 30 shall be by this resolution read a first and second time by the therein listed titles, and referred to the therein designated committees.

Adopted.

**HB 601-FN-A** - establishing a public water access advisory board and a statewide public boat access program and continually appropriating a special fund for the purposes of the program and creating a new class of highways for access to public waters. Wildlife and Recreation committee.

**HB 689-FN** - relative to implied consent and administrative motor vehicle license suspension. Judiciary committee.

**HB 1025-A** - relative to budget adjustments for fiscal years 1992 and 1993. Finance committee.

**HB 1026** - relative to a companion bill to the supplemental budget. Finance committee.

**HB 1151** - establishing a committee to study the economic feasibility of utilizing vacant space at the New Hampshire hospital for certain state offices. Executive Department committee.

**HB 1254** - relative to public employee labor relations board hearings. Insurance committee.

**HB 1265-FN** - regulating small motor mineral dredging and panning. Environment committee.

**HB 1269-FN** - separating the AFDC standard of need from the AFDC payment standards and increasing the AFDC standard of need. Public Institutions, Health and Human Services committee.

**HB 1342-A** - relative to the location and establishment of a state veterans' cemetery and making an appropriation therefor. Executive Departments committee.

**HB 1366-FN** - relative to adopting the state operating budget in the second year of the legislative session. Finance committee.

**HB 1386-FN-A** - establishing a foundation aid formula study committee, authorizing the committee to hire a consultant to study different methods of financing education and making an appropriation therefor. Education committee.

**HB 1394-FN-A** - making supplemental appropriations to the department of justice and the department of health and human services. Finance committee.

**HB 1447-FN** - increasing witness fees for law enforcement officers. Finance committee.

**HB 1493-A** - relative to extending the east-west highway study deadline. Capital Budget committee.

**HB 1501-L** - relative to unfunded state mandates. Executive Departments committee.

**HCR 30** - relative to the small-issue industrial development bond program. Economic Development committee.

### LATE SESSION

Senator Delahunty moved to adjourn.

Adopted.

Adjournment.

*March 19, 1992*

The Senate met at 1:00 p.m.

A quorum was present.

The prayer was offered by the Rev. Phillip Bruny, Senate guest Chaplain.

*Lord God, we approach this meeting as a time of union with you and with each other. May the spirit of prayer begin the work of our elected officials sustain their work and conclude it as well. The issues these legislators discuss are many and the solutions will not be easy. May the final outcome reveal that at all times they were respectful of each others ideas and positions. May these elected offi-*

*cials Lord, be united in height and in preference, although ideas and missions may divide these servants, may their love for you and for each other unite them in unity of purpose. Lord God, we ask your divine assistance for these Senators and the difficult task of representing the wishes of other people, may their visions as leaders of state extend beyond material things and encompass the ideals of the Judeo-Christian Christians ethic of love for God and love for thy neighbor especially as directed to victims of social injustice as here in New Hampshire. Lord God, send the gifts of your holy spirit to these Senators especially in times of temptation to misuse power while attempting to achieve desired results. Mindful of power our Lord Jesus Christ, bless those who persecuted him, may they show only compassion and kindness to all of whom they encounter and serve here today and the days ahead. Finally Lord, remind these women and men as they begin these deliberations today, that it is the peacemakers who are your dedicated followers. May the work that they begin here today, advanced to good of both thy kingdom and for the people in all corners of New Hampshire and we ask this in thy name.*

*Amen*

Senator Blaisdell led the Pledge of Allegiance.

### INTRODUCTION OF GUESTS

SENATOR DISNARD (Rule #44): Mr. President and members of the Senate, Senator Blaisdell as we know as Junie, the Senators are very pleased to have heard on TV last night, and read in the newspapers, and have people indicate that the Attorney General's Office is dropping some kind of legal action that you are more familiar with than we are. But, however, fellow Senators, I would like to indicate that I am concerned about the operation of the Attorney General's Office in this instance. How would you feel, I know how I would feel, if I found out that I might be indicted, not by a communication by the Attorney General's Office, but through the news media and everybody calling you up. How would you feel if you had been so investigated by the Attorney General's Office and you found out that the Attorney General's Office determined to drop any type of investigation and at first, your wife might have heard it on the TV last night? You might have had a newspaper delivered to your home today, and as it was being dropped, and I know as Senator Blaisdell came in this morning, he doesn't know that I am aware of this, he still hadn't heard from the Attorney General's Office. The citizens in this country as we know from some recent elections and goings on in the banking situation in Washington, and in the congressional hall, are upset with us. My fellow Senators, I think that we ought to be upset with the bureaucracy situation in the Attorney General's Office for

evidently there is no heart, no feeling, on how they investigate or what they do to people. You understand that this could happen to any of us, anyone by innuendo could go to the Attorney General's Office, it is a heck of a dangerous precedent. I would hope that somehow that this body would take some action to have the Attorney General's Office know that we are upset with the manner, the heartless manner in which they are operating. Just think of the family disruption this causes. Just think of the reputations that might be difficult to mend, but more importantly, just think of the dollars that have to be expended to defend yourself on a situation, when evidently, there was no background or no foundation. The courts today, as I understand it, allow a person who has been accused of something and wins, to be able to obtain some legal fees on the person who has been the legal accuser. I would hope that sometime that this chamber might look at the responsibilities in terms of dollars that the Attorney General's Office and the state, if they accuse someone and if they drop it, and it has no foundation, and that person might have lost his or her business or had more than that, some personal concerns that are moving around within their own families. Junie, I am embarrassed to be a Senator and find out that this happens, but I am also happy that now you might be able to get a good nights' sleep. Thank you very much.

SENATOR BLAISDELL (Rule #44): Mr. President and members of the Senate: Obviously, today is a very happy day in the Blaisdell household. I would be remiss if I didn't stand on . . . and by the way, Senator Disnard, thank you very much. I would be remiss if I did not stand on this floor and say to each and every one of you how much I appreciated the compassion, the goodwill, the advice that all of you gave to me over these past seven months. God forbid that it ever happens to you, I hope that it never does. I would have to say, and I want this on the record, that without my wife, and without my children, and without my sisters, and without Senator Dupont, the President of the Senate who was so helpful to me, without Senator George Disnard who offered his time and effort to me and of course, one of my best friends, Senator Joe Delahunty who I have a tremendous love for, and I hope that they don't paint me another picture of Joe, but I want to tell you how much I think of you in what you did for me. Without my wife, and without my family, and without the hundreds of people that, in my area and all over the state of New Hampshire, who wrote to me and called me and said prayers for me; the Irene Heart's of the world who sent me the mass cards. Certainly I am not so sure how I would have lasted really. As you know I refereed many tough ball games throughout my life and I always felt that I was that tough official that could do anything. I have to tell

you now that sometimes it was hard to come in here and hold my head high, but knowing that all of you had some faith in me and in the justice system of New Hampshire, that I could endure it. I thank you. I will never forget you because the two loves of my life of course, are my family, my wife and this Senate. I would never do anything, never do anything to hurt this body because I love it so much and everyone that served here. You, the younger people that are in this Senate will remember someday, I hope that you are going to get calls from some of us who will leave asking how you are. I received one from Senator Dick Ferdinando, of Manchester. Many years ago I served with him. He gave me the strength and the advice and he said, "Junie, you have to look to someone else because you can't do it alone. Just ask for his help, ask for Gods help, and just ask for his help and you will come out alright." So now when I received the call this morning from the Attorney General's Office, I want you to know what I said. I told Mr. Arnold that I held no animosity towards anyone and I want this behind all of us. I will not comment on it anymore other than to say what my family feels and that he was welcomed in my office at anytime because I hold an office downstairs that the Senate President was kind enough to give me and let me stay there, by the way, since last September when I told him that if he felt uncomfortable with me being there, that he didn't have to keep me there; that I would step down. Eddy Dupont said, "no." I told Mr. Arnold that he was welcomed at anytime and I wanted this behind us because we in this chamber and across this hall have some of the most severe problems facing this state in this country. I want to get on with that and try to do the best job that I can and with your help, I can. I want you to know how much I appreciate what you did for me, the confidence that you put in me, and I love each and everyone of you. Thank you.

SENATOR DUPONT: For the members information, I did get a phone call from the Attorney General this morning and met with him a little bit earlier on, prior to Senator Blaisdell's arrival, and told him of my concerns and I guess the concerns that we all share, because the whole question has been a difficult one for the Senate. While it has been difficult, he made it very clear that he felt that Senator Blaisdell and his conduct within this chamber as a member of fiscal during this last seven months has been exemplary. He has not let it interfere with his responsibilities as a Senator. The Attorney General is most appreciative of the way that Senator Blaisdell has conducted himself through all of this. I guess we all understand how difficult that it has been. So, Senator Blaisdell, I think the whole body feels that the cloud has been lifted; and certainly we

expect you to get back to work, and your next job is the supplemental budget, that is going to be a difficult one. Thank you for your kind words.

### HOUSE MESSAGE

The House of Representatives has passed the following Bills with the following titles, in the passage of which it asks the concurrence of the Senate.

**HB 1226-FN**, to protect the department of transportation against liability in the construction and maintenance of highways and highway bridges. Judiciary committee.

**HB 1314**, establishing a committee to study the need for a public corporation to finance and operate environmental projects for the benefit of the state and making changes in certain water laws. Environment committee.

### INTRODUCTION OF HOUSE BILLS

Senator Delahunty offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House bills numbered 1226 and 1314 shall be by this resolution read a first and second time by the therein listed titles, and referred to the therein designated committees.

Adopted.

### First and Second Reading and Referral

**HB 1226-FN**, to protect the department of transportation against liability in the construction and maintenance of highways and highway bridges. Judiciary committee.

**HB 1314**, establishing a committee to study the need for a public corporation to finance and operate environmental projects for the benefit of the state and making changes in certain water laws. Environment committee.

Senators Hough, Nelson and St. Jean are excused for the day.

Recess.

Out of recess.

SENATOR DUPONT: We are going to go out of sequence on the bills that are before us today and deal with the committee on Ways and Means first so that we can send HB 1148 over to them today for concurrence. So the Senate will be attentive to a committee report from the committee on Ways and Means on HB 1148.

## COMMITTEE REPORTS

**HB 1148**, an act relative to technical corrections in certain tax laws. Ways and Means committee. Ought to Pass with Amendment. Senator McLane for the committee.

**5393L**

**Amendment to HB 1148**

Amend the bill by replacing all after section 4 with the following:

5 Dividends on Mutual Funds not Taxable. Amend RSA 77:4-d to read as follows:

77:4-d Dividends Earned on Certain Mutual Funds **and Distributions Received on Unit Investment Trusts** Not Taxable. Notwithstanding any provisions of RSA 77:4 to the contrary, the dividends earned by an investor in a mutual fund **or the income earned or distributions received by an investor in a unit investment trust** which invests solely in New Hampshire tax-exempt tax anticipation notes, bond anticipation notes and other instruments exempt under New Hampshire law shall not be taxable under this chapter.

6 Deduction from Business Profits for Personal Services. Amend RSA 77-A:4, III (b) to read as follows:

(b) The amount of any deduction claimed under subparagraph (a) shall not exceed the amount reported as earned income from the activities of the business organization as reflected on the federal income tax returns of the proprietor or partner rendering such personal services, but may also include an amount not to exceed net rental income as compensation for operating rental property, and an amount not to exceed 15 percent of the gross selling price as commissions on the sale of business assets. Provided, [that subject to the preceding sentence] **however**, a minimum deduction of \$6,000 shall be allowed on account of the proprietor or each partner who is a natural person actually devoting time and effort in the operation of the business organization.

7 Unclassified Salary Added. Amend RSA 94:1-a, I by inserting in group L the following: Assistant director, document processing division, revenue administration.

8 Tobacco Tax; Resale of Stamps; Redemption. Amend RSA 78:10 to read as follows:

78:10 Resale of Stamps; Redemption. No wholesaler shall sell or transfer any stamps issued under RSA 78:9. The commissioner shall redeem any unused, uncanceled stamps presented by any licensed wholesaler at a price equal to the amount paid by such licensee. In case such stamps are destroyed before they are affixed, the commissioner shall refund the purchase price upon presentation of evidence of such destruction satisfactory to the commissioner. The commis-



sioner shall refund the purchase price for stamps and metered impressions which are destroyed after affixing to outdated, damaged, or unsaleable tobacco products. **The commissioner also shall refund or provide a credit for future tax payments on outdated, damaged, or unsaleable tobacco products exempted from bearing stamps by the commissioner under rules adopted under RSA 541-A.** The state treasurer shall provide, out of money collected under this chapter, the funds necessary for redemption or refund.

9 Investment Tax Credit. Amend RSA 162-L:8 to read as follows:  
162-L:8 Investment Tax Credit.

I. An investment tax credit equal to 75 percent of the contribution made to the authority during the contributor's tax year shall be allowed [at the contributor's election] against [one] **any** of the following **individually or in combination**:

- (a) Taxes imposed by RSA 77-A.
- (b) Taxes imposed by RSA 84.
- (c) Taxes imposed by RSA 400-A.

**I-a. Credits provided by this section applied against the liabilities imposed by RSA 84 and RSA 400-A shall be deemed to be taxes paid for the purpose of RSA 77-A:5, II and III, respectively.**

II. The credit or any unused portion thereof[,] may be carried forward for no more than 5 succeeding tax years, but shall not exceed \$200,000 in any given tax year.

**III. The credit provided by this section shall apply to contributions made to the authority on or before June 30, 1996.**

**IV. Estimated tax payments under RSA 84:16-f and RSA 400-A:32 due and payable after the date of contribution to the authority may be reduced by the credit allowable under this section.**

10 Repeal. The following are repealed:

I. RSA 83-D:10, relative to adjustments and procedure concerning the assessment of the tax on nuclear station property.

II. RSA 83-D:11, relative to appeals from certain decisions of the commissioner of revenue administration.

III. RSA 83-D:12, V and VI, relative to the administration of the tax on nuclear station property.

IV. 1991, 334:5, relative to the prospective repeal of investment tax credits.

V. 1991, 334:6, II, relative to the effective date of the prospective repeal of investment tax credits.

11 Effective Date.

I. Section 9 and paragraphs IV and V of section 10 of this act shall take effect upon its passage.

II. The remainder of this act shall take effect 60 days after its passage.

### AMENDED ANALYSIS

This bill limits the imposition of penalties and late payment charges against utilities that request an extension of time to file returns. Interest, however, shall accrue at the rate of 1-1/4 percent per month.

This bill increases the life of certain liens from 3 to 6 years.

The bill amends or repeals certain sections concerning tax adjustments, hearings, and appeals which are superseded by changes made to the chapter governing the department of revenue administration in the 1991 session.

The bill makes the income earned or distributions received by investors in a unit investment trust which invests solely in New Hampshire tax-exempt tax anticipation notes, bond anticipation notes and other instruments exempt from taxation under New Hampshire law nontaxable.

The bill establishes the salary of the assistant director, document processing division, revenue administration in group L.

The bill allows the commissioner of revenue administration to provide refunds or credits for future tobacco tax payments on outdated, damaged or unsaleable tobacco products exempted from bearing stamps.

This bill also allows certain investment tax credits to be taken individually or in combination and repeals the prospective repeal of the investment tax credit for contributions to the community development finance authority, which would otherwise occur on June 30, 1996.

SENATOR MCLANE: I think that it is perhaps symbolic that the reason we are sending over this bill early before the House goes out of session is because of the good work of Senator Blaisdell. There is a section of this bill which is a bill relative to technical changes in certain tax levies that was worked on by the House, it has been passed by them. It seems the most innocuous bill we can find, and there are some very important changes that Ways and Means have added that we would like to get over today. There is a March 31 deadline for the Nonprofit Housing Corporation of Keene, and Jack Donovan is part of the New Hampshire Housing Authority, and he came and told us about an apartment house with 13 apartments in Keene that needs this piece on an investment tax credit equal to 75 percent of the contributions made to the authority. This is an offset against the business profits tax. That section is added on to technical corrections and then of course, something about the title of that bill, everyone got in on the act. We had the tobacco people come in and tell us that in our haste, to do the chewing tobacco bill last session, we forgot to put in a piece of boiler plate that says that if

something happens to this chewing tobacco, like it gets wet, that they get the money for the tax back. So that is that section. You will be interested to know that they have made a half of million dollars out of snuff and chewing tobacco. It was a good thing to pass. The other section if you care, has to do with mutual funds not being taxable and changing that definition so that it would include investor unit investment trust funds as well. Those are New Hampshire funds that probably should not be taxable, but it is easier to have the wording in the law, rather than have people have to go to court to prove that it should be there. So those are the technical changes. The hurry is because of the Keene housing problem, we are anxious to get it over to the other side. I guess that probably I have great respect for Stan Arnold who is the person who collects the money around here for the state. He has spent a great deal of time going over these amendments, as has the Ways and Means committee in the House. Donna Sytek is waiting for the bill to come over and, I assume, that it will get to the Governor's desk this afternoon.

Committee amendment adopted.

### **SUSPENSION OF THE RULES**

Senator Blaisdell moved that the rules of the senate be suspended to put HB 1148 an act relative to technical corrections in certain tax laws on third reading and final passage at the present time.

A 2/3 vote required.

Adopted by the necessary 2/3 votes.

Ordered to third reading.

### **Third Reading and Final Passage**

**HB 1148**, an act relative to technical corrections in certain tax laws.

Recess.

Senator Delahunty in the Chair.

**HB 1262**, an act relative to the rulemaking authority of the bank commissioner. Banks committee. Inexpedient to Legislate. Senator Pressly for the committee.

**SENATOR PRESSLY:** It was the recommendation of the committee that this bill be reported out inexpedient to legislate. It was a unanimous decision. It became apparent during the public hearing that there really was no need for this, that the Commissioner does now have the ability to have the owners of escrow accounts or the holders of escrow accounts to make payment if they should be late. There was also the question as to the legality through rulemaking, could

there be the imposition of fees penalties. Thanks to, and the good work of our Chairman, Senator Fraser, it has become apparent that even that part is not allowable by statute, which just confirms the wisdom of the committee in suggesting and recommending inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

**HB 1320**, an act extending the time for recording a foreclosure deed and affidavit after a foreclosure sale when such recording is prevented by order or stay of any court or law or the United States Bankruptcy Code. Banks committee. Ought to Pass. Senator McLane for the committee.

**SENATOR MCLANE:** This is the first bill that I have ever reported out for Banks. The reason that they let me do it is because the title is so self explanatory, that I really don't have to say anything.

Adopted.

Ordered to third reading.

**HB 1054-FN**, an act relative to the industrial development authority. Economic Development committee. Ought to Pass with Amendment. Senator Shaheen for the committee.

**5377L**

### **Amendment to HB 1054-FN**

Amend the bill by replacing sections 1 and 2 with the following:

1 Findings and Recommendations. The general court recognizes that in the first instance the primary focus of this act will be a proposed guarantee agreement for the James River Corporation, and specifically its plants operating in the Berlin/Gorham area of New Hampshire. In the course of the hearings before it, the general court has heard testimony about concerns of the state which ought to be recognized in the course of the negotiations. Therefore, the general court respectfully recommends to the governor that the conditions enumerated hereinbelow be incorporated in any guarantee agreement entered into under RSA 162-I:9-a between the state of New Hampshire and James River Corporation:

I. That the parent corporation, James River Corporation, of Virginia, be the party to the guarantee agreement.

II. That the agreement include a provision stating the maximum guarantee amount, principal and interest, covered by the agreement.

III. That the agreement include the maturity and interest rate of the underlying indebtedness covered by the agreement.

IV. That the agreement include a representation by James River Corporation that a minimum of \$25,000,000 is to be expended, utilizing New Hampshire workers to the maximum extent possible, for the purpose of improving environmental systems of the plants operating in Berlin/Gorham.

V. A description of the rest of the capital investment program planned by the James River Corporation in Berlin/Gorham.

VI. A representation by James River Corporation that it intends to pursue other tax-exempt sources of funding.

VII. That if a sale of the plant or a permanent cessation of operations occurs or there is a transfer or assignment of the guaranteed loan, the loan will be accelerated and New Hampshire will be relieved of its guarantee obligation.

VIII. Standard, commercial cross-default provisions.

IX. A requirement that the James River Corporation make quarterly reports of its financial condition to the governor.

2 Purpose. The general court finds that the state is now experiencing a period of severe economic difficulty and that when such periods of economic difficulty occur it may be necessary for the state to intervene in order to protect or promote the economic well being and general welfare of its citizens and to minimize the risk of permanent economic damage to the state or a region of the state. It is the purpose of this act to authorize the state to guarantee revenue bonds issued by the industrial development authority under RSA 162-I in order to protect and promote the economy of the state. It is also the intent of the general court to maintain fullest employment possible at the Berlin/Gorham plants on projects where these funds are used. It is hereby declared that the governor and council, the state treasurer and the industrial development authority shall be performing a governmental function, advancing a public purpose and conferring a public benefit in carrying out the provisions of this act.

SENATOR SHAHEEN: This bill provides the guarantee on \$25,000,000 in bonding for the James River Company to use to upgrade the plant in Berlin, Gorham to provide upgrades necessary to comply with new clean air regulations, primarily. The changes that you will see in the amendment from the bill in IV of the amendment on page four. There is the addition of a clause that requested to the maximum extent possible New Hampshire workers be utilized on making those improvements. In number VII we defined when the guarantee would end and we added the words of permanent cessation of operations. In the purpose clause we added a line that pointed out that it is the intent of the general court to maintain the fullest employment possible at the Berlin, Gorham mills.

SENATOR HUMPHREY: Senator Shaheen, how do other companies apply for this money, like my own for example?

SENATOR SHAHEEN: I think the concern on the part of the legislature and the state for the need to help James River deal with their current situation is the extent to which the economy of the north country is dependent upon the mills. We heard testimony that about 12,000 jobs are dependent, in one way or another, on the mill. It accounts for about over 50 percent of the economy of the north country. So there was the feeling on the part of the committee in the House, that the state has a significant interest in making sure that the economy and the jobs in Berlin, Gorham are maintained.

SENATOR HUMPHREY: I have no doubt that it is true, Mr. President. But the same is true of other plants in other communities. So my real question is how do we make a distinction? Is it only a matter of who has the most powerful lobbyist or how did we get to where we are today, why is it James River versus plant X in community. Because James River lobbied for this money, is that it?

SENATOR SHAHEEN: Well again, I think the difference is the extent to which the economy of the entire northern portion of the state is dependent upon that plant, unlike, we just had a closing of one of the major businesses in the city of Dover, Clarostat, that is going to close and while we all think that that will have a dramatic impact on the people who are employed there, it will not shut down the entire economy of the city of Dover and the seacoast. I think that that is the distinction that we want to make at James River, is that it has an impact not just on Berlin and not just on Gorham, but on the entire economy throughout Coos and parts of Grafton and Carroll counties.

SENATOR COLANTUONO: I noticed on number six on the amendment that James River has to pursue other taxes and sources of funding. I was just curious to know what those other sources might be?

SENATOR SHAHEEN: I don't know the answer to that, Senator Colantuono. I think that it is important to point out that we heard testimony at the hearing that the \$25,000,000 and this isn't state money here, we are only providing the guarantee on this money. It is part of a capital expenditure that is going to go into those plants of over \$100,000,000. So not only is the state going to be backing up their investment, but the company itself is going to make a significant investment in the facility. The other thing that you will notice is that the parent corporation of James River, the entire company is going to backup this guarantee, not just those particular mills.

SENATOR COLANTUONO: Senator King says community development block grant money is one of those.

SENATOR SHAHEEN: Senator King can certainly respond to that.

SENATOR W. KING: Senator Dupont can respond to this.

SENATOR DUPONT: I could and there are pieces to this package that have been put together that do include community development block grant money as well as some additional issues under the Industrial Development Authority that will potentially be a tax free issuance through the Industrial Development Authority based on a determination that is going to be made by the IRS whether they are allowed to be tax exempt. I would like to be recognized to speak, Mr. President.

SENATOR DELAHUNTY (In the Chair): Go ahead, Senator.

SENATOR DUPONT: I am sorry that I wasn't here for the earlier part of the debate on his legislation and I apologize if I repeat any of the remarks of Senator Shaheen. But I think that it is important that this body recognize that something very special happened up in Berlin. What we are doing here today is a continuation of some hard work that went on within the Berlin community to make sure that these jobs didn't leave the city of Berlin. I am sure that somebody referenced how important this facility is to the whole north country. This is an extremely sensitive situation for our state. They are not coming in here asking for anything other than opportunity to make this facility productive and competitive. When the sale was announced of the James River plants in Berlin and Gorham and Groveton, the people of Berlin, rather than sitting back and saying that there is nothing that we can do, got together and put together a task force and came down here and said to the state government, we are going to try and save this company. The Governors Office, Senator Oleson, Senator King, myself and a lot of the resources in state government have been working for over a year to try and put together a package that would convince the James River Company to stay in the north country. What you have today is a small piece of the package that has been put together. There has been a commitment made by James River that they will keep that facility open. As part of keeping it open they have to modernize the facility to meet environmental compliance in a number of different areas. Quite frankly, given our willingness to spend money on economic development, what you have in front of you is just a small contribution from the state of New Hampshire that basically is the survival of the north country and the jobs that exist up there today. I don't think that it is

too much for this state to be asked to do this. We all know how difficult our economic conditions are in our state. I know that I have preached to this body before that if we are going to get out of this mess that we are in right now we have to be willing to not look back over our shoulder at what we have done in the past years, but look forward with some vision and use what limited resources we have in a way that maximizes the ability of our state to help the businesses of the state. This is good public policy and it is good legislation. It also says thanks to the people of Berlin and to the people in Berlin that have worked to keep this plant open. Because when the plant closes, whether you want to acknowledge it or not, those people who are going to be out of work are going to be our responsibility and we are going to pay for them one way or another when that happens. I find it interesting that we will have people who won't participate in this type of activity in this Senate and then they are going to stand up two weeks from now when we have our supplemental budget and complain about the money that we are spending on Health and Human Services to take care of those people that find themselves in a situation where they don't have work, can't keep their homes and have to rely on the state of New Hampshire to put food on their table. So you have a choice, you can support this and keep people working in the north country or you can turn your back and say no this isn't a role for state government and then face the other aspect of this of trying to provide for those people who can't provide for themselves. Mr. President, I thank you for the opportunity to speak on this bill, and I would urge my colleagues to support this legislation.

SENATOR OLESON: Thank you, Mr. President, Pro Tem. Of course this bill is aimed more or less in my district, so I don't think that I would be amiss by not standing up and saying a few words on behalf of this bill. As I said a couple of weeks ago on this floor, that when I first came down last year we had a luncheon more or less organized by Senator Blaisdell and we met with the hierarchy, if you like, from my district and different companies. Then they were more or less assured that if there was any legislation that might come in, even after the deadline, that they might come in under rules, if it effected the welfare of the economy of my district. Later on, two or three weeks ago, we had a meeting in Berlin on economic development and there our good President, Mr. Dupont, took his valuable time to come up and to reassure the people in his speech that there was help on the way as far as we were concerned by legislation like this. I got a call two weeks ago from Mr. Shank, who is the president of that division or divisions. He said that one of the major reasons that we have taken down our for sale signs is because people like



Senator Dupont and Senator Blaisdell and others have assured us that there would be help at the state front. I want to repeat it. The reason that the for sale signs have been taken down have been because of the action that this body of people, not just one or two, but the whole body as a whole, has assured them that there was help on the way or that there would be. This isn't the first time. Pulp and paper is an up and down type of business. Back in 1938 and 1939 the state came in when the Old Brown Company as such, went through bankruptcy, and they lent money to the city of Berlin. I know it because I was in the woods at that time and the people working in the woods industry at that time, when we got our pay it was drawn on the city of Berlin. Money was applied and later on payed back and it worked. I think today that we might be in the same position even though at this time bills like this will make it more workable than it was in the past. I think that you have to live in the north country to really understand, to really know it. Such things when we come to economic development that we have to understand that we are a country of mountains, valleys and flood plains. They claim that if they ever took Coos county and hammered it out flat it would be bigger then the state of Texas, and I really believe it.

SENATOR HEATH: You want to try?

SENATOR OLESON: But nevertheless, when we do have industry to move in, they have to take advantage of the land that is really available. When you take a valley and you put a river and a railroad and a pipeline through it, there isn't much land left. So we do have to be very careful and we have to treasure our rivers and we have to treasure our land and mountains. All I can say is again, Mr. President, I think I would be remiss if I didn't thank this body of people as a whole for extending the help that they have given and promised to my district and this is one of the vehicles that will make it possible.

SENATOR BLAISDELL: I rise in strong support of this piece of legislation and commend Senator Oleson and Senator Dupont. I might want to say that I commend the city of Berlin and the people of Berlin who put a tremendous amount of effort into this. Someone said to me a long time ago that what we don't do in New Hampshire is reinvest back into the product. This is what we are trying to do in this piece of legislation and the product is the James River Company. They have put a commitment out to the people of this state and the people of the north country. I ask you to support this bill because I think that it is in the best interest of the people of this state and especially the people of the north country.

SENATOR HUMPHREY: Senator Shaheen, I'll start first by noting that in unamended section three of the bill, the language states that the full faith and credit of the state shall be pledged for any such guarantee. That is boiler plate, but it is still a mouthfull, it makes it pretty clear that we are going to stand by the repayment of this indebtedness. My concerns are about the terms. I mean I don't know how this is ordinarily done, maybe this is the way that it is done, but it looks like we are giving the Governor and council almost a blank check except that they can't spend any more than the amount appropriated, which is \$25,000,000. They can spend up to that amount, I beg your pardon, they cannot spend less than the full amount according to this amended language. They have to spend all \$25,000,000 to be applied to the James River Corporation. Let me just say referring to what I said earlier about other industries and business in communities that would probably like the same treatment. That certainly the condition of the banks effected the state of New Hampshire as a whole, at least as severely as the condition of James River effects the north country. There are many industries and businesses in the state that would like this kind of loan guarantee and I don't know how or where we draw the line when they begin to queue up at the door for equal treatment. I am looking at amended section one on page four of todays calendar and at the bottom of the first paragraph it says, there in the findings and the recommendations it says, "therefore the general court respectfully recommends to the Governor that the conditions enumerated herein below be incorporated into any guarantee agreement." But we are not requiring that these conditions be enumerated in such an agreement, are we? Therefore, we are saying to the Governor and I guess, to the councilors, here is \$25,000,000 in loan guarantees and you have to spend it all on James River and you don't even have to assure that James River Corporation intends to pursue other tax exempt sources of funding. We just merely make that recommendation. Is my understanding correct, these are purely just recommendations to the Governor?

SENATOR SHAHEEN: Your understanding is correct that the Governor will negotiate with James River and come up with the final agreement.

SENATOR HUMPHREY: Did the committee take any evidence that James River has exhausted all traditional avenues of borrowing and that this is the one and only means to assure access to the necessary credit?

SENATOR SHAHEEN: Well I think that you heard Senator Dupont speak earlier and Senator Oleson to the role that the states

guarantee has had in encouraging James River to make the investment in this plant to keep it open and to help the economy and save those jobs.

SENATOR HUMPHREY: Right. But my question was, did the committee find on its own any evidence that the company, the corporation has exhausted all traditional avenues of credit?

SENATOR SHAHEEN: I am going to defer to Senator Dupont.

SENATOR DUPONT: Senator Humphrey, there has been better than a year of negotiations that have been ongoing between the state of New Hampshire and James River and the city of Berlin and their task force. What came out of that was an agreement that certain conditions would be established prior to the state of New Hampshire giving this guarantee. Obviously, the continuation of operations of the plant in some form, obviously that there would be other financing secured by the company. The company presently spends about \$25,000,000 a year just on maintenance to keep that facility open. One of the boilers is the oldest pulping boiler in the world. It is a high maintenance facility which is worth its deterrent. They are going to commit another \$125,000,000 in physical improvements to the facility to make it competitive. As part of this, I think, the state sat down in good faith with the local community and with the company and with the people that work in that facility who also demonstrated the willingness to help the productivity of the plant which they have demonstrated over the last year. So there was a lot of commitments made. A commitment of the state of New Hampshire, as I indicated, is that we would provide a guarantee. The guarantee is to make it more attractive for them to stay here. I will be honest with you, I don't have a problem with that, because I know the cost of finding 1,500 jobs to replace those that are there. I don't believe that there is much risk to the state of New Hampshire with the full faith and credit of the company behind this; and quite frankly, it makes the plant more attractive, if in fact James River decides that it doesn't want to do business in New Hampshire anymore, to the next buyer. But I think to reduce what has gone on in the last year or to change the language that is on this page is a disservice. Because what has resulted in the continuation of operations of this plant is the hard work of the Governors Office, DRED and the people of Berlin, and some of the members of this body who have, I think, sat down and came up with a plan with a way to keep this company in New Hampshire and people employed at a minimal cost and a minimal risk to the state. Whether or not they explored all sources of financing, I can't answer you, other than that this is a piece of a package that makes this facility work in the future. The

fact that we can provide them with a lower cost of money was one of the aspects that determined their willingness to continue to operate the plant in New Hampshire.

SENATOR HUMPHREY: I thank the President for that explanation. Is there anything that requires James River Corporation, is there anything that requires the lenders to attach the assets of James River Corporation prior to calling upon the loan guarantee offered under this piece of legislation?

SENATOR DUPONT: Senator, the states' position in this will be foremost. I guess that may not be the proper terminology. But in fact, our guarantee on this bond will be conditioned as we had discussions with the state treasurer and Pat Oliver, who has done negotiations for the Governors Office and I think that he has done a good job of putting this forward. This will be tightly crafted. The state of New Hampshire will be protected if in fact the decisions are made that are adverse to the health of James River that effects our ability to secure assets from the company, then that would be a condition of this bond. I think that you have to rely on the treasurers office, our bond council who will be working with the treasurer on this issuance as well as the Governor's Office, and they will have a say in how this is finally crafted.

SENATOR HUMPHREY: The question has been called, Mr. President?

SENATOR DELAHUNTY (In the Chair): Yes, the question has been called, Senator.

SENATOR HUMPHREY: Then I will have to ask another question. I do wish in these important matters that Senators wouldn't be so quick in calling the question. This deserves substantial debate, it seems to me, but the question has been called. Do I understand correctly then that the first call is upon the guarantee of the faith and credit of the state and the assets of the corporation are subsidiary?

SENATOR DUPONT: That is not correct, Senator.

SENATOR HUMPHREY: I misunderstood?

SENATOR DUPONT: Yes.

SENATOR HUMPHREY: So that if James River somehow doesn't meet the repayment terms, the creditors will go first after the corporations assets, is that correct?

SENATOR DUPONT: That is typically the case with matters usually whenever the state puts its guarantee that it requires collateral to be present before our guarantee is required.

SENATOR HUMPHREY: But nothing before us in this matter?

SENATOR DUPONT: Senator, I believe that what we have requested at this point is that the assets of the James River Company be used to guarantee this money. That will be called before our guarantee would be called. That was specifically done rather than just the plant in Berlin, because we wanted more protection than just the plant.

SENATOR HUMPHREY: Yes, right. I thank the Senator for his explanation, that is an important distinction; however, we are only making that recommendation. Can't we somehow bind the executive. Do we have to pass this in such an open ended fashion?

SENATOR DUPONT: Well, Senator, I would just say that I know that you are a businessman, a business person I guess is the correct terminology. Negotiations as you know, sometimes are difficult when you are talking about sums in excess of \$20,000,000 that could potentially be negotiated as part of this, and quite frankly, I don't think that the committee felt uncomfortable with our state treasurer and bond council for the state of New Hampshire and the Governor's Office coming up with an agreement. Quite frankly, I think that we have given them the flexibility to, depending on how the negotiations go, be tougher or more lenient, based on what they perceive the position of the company to be.

SENATOR HUMPHREY: What is the rush, why can't we wait until an agreement is reached and then draft the legislation to fit the agreement?

SENATOR DUPONT: Well, Senator, as I have said, it has been a year of negotiations, and we now have before us a plant that is going to continue to operate. And quite frankly, we probably should have done this a month ago, rather than wait. The company is anxious to proceed forward. The document is going to be very technical. I don't believe that it is necessary to put the whole document in legislation when we have built into the whole bond authorization process in this state, a number of safeguards. The rush is that we want to keep 1,500 people working in Berlin. Quite frankly, that is what this legislation helps do.

SENATOR HEATH: Senator Dupont, when you talked about the assets of James River, I want to clarify that. Surely you don't mean all the assets of James River, just the domestic ones?

SENATOR DUPONT: Senator, I can't tell you specifically what assets that the Governor's Office will request be pledged, but we will be asking for the full faith and credit of the James River Company to stand between us and the bond holders on this; therefore, whether

or not that is domestic or not domestic, I don't think makes a difference. They will in fact be at risk and I would assume based on how this agreement is written, that there may potentially need to be a separation between domestic and nondomestic, I can't tell you that. Clearly as I indicated, Pat Oliver has done a good job. I give him credit for the work that he has done. He comes from a company, as you know, that was fairly large and he has been involved in these types of agreements before and I am quite comfortable with his expertise in these matters. As we have found before, many times before when we have had to rely on him for these types of things, I think that he has done a good job.

Senator Bass moved the question.

SENATOR HUMPHREY: Parliamentary question? Is the motion to recommit to committee with instructions in order?

SENATOR DELAHUNTY (In the Chair): The motion that is on the floor right now, Senator, is to limit debate. That motion will have to be decided first and then the motion to recommit can follow.

The question is on moving the question.

Adopted.

SENATOR HUMPHREY: I don't know the correct phraseology, but I hope the Chair will help. What would be the correct phraseology to moved to recommit with instructions?

SENATOR DELAHUNTY (In the Chair): Senator, I believe that you just moved to recommit the bill. You just need to give the bill number and it will be sufficient. To recommit the bill, with the bill number. Your motion is to recommit HB 1054-FN.

SENATOR HUMPHREY: Yes, but is it in order to make a motion to recommit with instructions to the committee?

SENATOR DELAHUNTY (In the Chair): The motion should be, Senator, to make the motion to recommit to committee and then you would have to go to the committee for the instruction portion of it.

SENATOR HUMPHREY: I see. Well this body differs from others in that respect, I guess, but one has to play by the rules.

SENATOR DELAHUNTY (In the Chair): I am sorry, Senator, I can't hear you.

SENATOR HUMPHREY: I said, this body seems to differ from others in that respect, but the rules of this body apply, obviously. Therefore, Mr. President, hoping that we might in the committee, ask the committee to tighten up the language to require that the assets of James River be first and foremost, and in front of the full

faith and credit of the state. I move that the bill be recommitted to Economic and Development committee and I ask for a roll call vote on that.

### **MOTION TO RECOMMIT**

Senator Humphrey moved to recommit HB 1054-FN an act relative to the industrial development authority to the Economic Development committee.

A roll call was requested by Senator Humphrey.

SENATOR DUPONT: I would like to be recognized to speak to my fellow colleagues in the Senate.

SENATOR DELAHUNTY (In the Chair): Excuse me, Senator, I am sorry.

SENATOR DUPONT: I had requested to speak and I believe that that was made prior to . . .

SENATOR DELAHUNTY (In the Chair): We had voted to limit debate, Senator . . .

SENATOR DUPONT: On the previous motion.

SENATOR DELAHUNTY (In the Chair): On the previous motion. The motion has been made to recommit and a roll call requested.

SENATOR DUPONT: Could I ask the Chair, did I not ask to speak and is this not a different question, so do I not have the ability to speak to this question?

SENATOR DELAHUNTY (In the Chair): Senator, I suspect that you probably know the answer to that better than I do, but yes, I did recognize that you did wish to speak, but I am not sure at what point.

SENATOR DUPONT: Mr. President, I hate to challenge the Chair . . .

SENATOR DELAHUNTY (In the Chair): Make it a parliamentary inquiry, Senator, and we will just resolve the issue, please.

SENATOR DUPONT: Mr. President, having been subject to some of the parliamentary inquiries that come to the Chair of this Senate, I will not ask for a parliamentary inquiry to make my point as a difference to the prerogative of the office that will allow me not to speak. Is that my understanding, that I will not be allowed to speak?

SENATOR DELAHUNTY (In the Chair): Did I have a second on the roll call?

SENATOR HEATH: Yes.

SENATOR DELAHUNTY (In the Chair): Thank you, Senator.

SENATOR RUSSMAN: Parliamentary inquiry, Mr. President?

SENATOR DELAHUNTY (In the Chair): Go ahead, Senator Russman.

SENATOR RUSSMAN: Is the motion to recommit debatable?

SENATOR DELAHUNTY (In the Chair): Yes.

SENATOR RUSSMAN: So someone could speak to that motion if they chose to, even at this time?

SENATOR DELAHUNTY (In the Chair): It is debatable, but however, not after a roll call has been called for. One Senator at a time and I will call on each and every one of you.

SENATOR RUSSMAN: I think that he could withdraw his motion for a roll call if he chose to, to continue debate, is that not correct?

SENATOR HUMPHREY: I apologize. I didn't mean to cut off debate. I withdraw the motion, intending to offer it at an appropriate time. Excuse me. I withdraw the request for a roll call vote, not the motion. I will reinstate it later.

SENATOR DELAHUNTY (In the Chair): Thank you, Senator. Now the Chair will recognize Senator Dupont.

SENATOR DUPONT: Thank you, Mr. President. My point was that I had requested to be recognized to speak before the second was made on the motion for the roll call, and I still feel that it would have been appropriate to recognize me, so I disagree.

SENATOR DELAHUNTY (In the Chair): Thank you for the reminder, Senator.

SENATOR DUPONT: I will just add a couple of things in. I want the Senate to know that our Economic Development committee asked many of the same questions that Senator Humphrey has posed here today and we felt quite confident and quite comfortable in bringing this bill before you. Not only did we ask the questions at the hearing, but we also brought in Pat Oliver and our state treasurer yesterday to bring in additional assurances to us. I think the executive branch, quite clearly, has made the point that they would be uncomfortable going to the table with a laundry list of requirements from the legislature that will hinder their ability to negotiate the best deal for the state of New Hampshire. I would also add that I have spoken to a number of individuals from Berlin this week, people who have worked on this package, put a lot of time and effort into it and quite frankly, I don't believe that it is in the best interest of the state right now, given the crucial state of affairs up there, for us to now walk away from the table and start the process all over again.



This bill is the result of the negotiations getting to the point of completion. Even though the things aren't specified in here that perhaps, Senator Humphrey would like to see, it is not in our best interest as a state to hold this up any further. So I would urge my colleagues to defeat the recommit motion as offered by Senator Humphrey, because quite frankly, as one of the members of Economic Development, there will not be interest on the part of the committee in amending this bill any further then they have already done.

SENATOR OLESON: Why I asked to be recognized to speak, Senator, you just cleared it up, so I will just say it this way; is it not true that many, many hours of valuable time have been spent on this bill and to delay it any more is not going to serve any good interest. Is that not true?

SENATOR DUPONT: That is the case, Senator. What we have in front of us is the state of New Hampshire's commitment that they made at the table to participate in saving 1,500 jobs in Berlin. I think that it would be an insult to the people of Berlin, the people who we negotiated this agreement, for us to now say that we want this in writing, guys, we don't believe you. There has been a good faith attempt to put this together.

SENATOR HEATH: Senator Dupont, you just said something that sent chills through me and I want to clarify it. You said that the Economic Development committee would have no interest in looking at this. My question to you is, given that we have seen in this legislative body, policy committees do their work, and their work be sent over to the Economic Development committee to rewrite our policy on things that have nothing to do with economic development; and now it is revealed suddenly, that even that committee is represented by a person to one person. So not only do we have a one committee Senator, but now we have a one Senator that can represent the policy of that committee before it has had the chance to listen to a question. Can you tell me anything that would relieve my concern in that regard?

SENATOR DUPONT: Senator, let me just say to you again, that this committee had a full public hearing, that the people from Berlin and the people who manage this company came down and spoke to us, and after we got through with the hearing we still had questions. We then brought the state treasurer in and we brought Pat Oliver in who has done the negotiations for the state of New Hampshire on this arrangement. As I indicated, there has been members of this body who have also participated in that process. We have reached a point where we are comfortable. We asked many of the same ques-

tions that Senator Humphrey has asked and we have gotten answers to those questions to get us to the point where we are comfortable with this. Now I will address your concerns relative to that. The process worked on this piece of legislation the way that it is suppose to work and all that I indicated was that I believe that we will be asking the same questions again that were asked when this bill came before us last time and we already have the answers to those questions and are comfortable. We specifically asked the question, should we not write into this legislation specific requirements, and I gave the reason why I don't think that is a good idea.

SENATOR HEATH: I would have been more comfortable if you would have said, I don't think that the committee would be interested in looking at this, but you said that the committee, quite frankly, wouldn't be interested in this. That sounded an awful lot like you representing the view of the committee on a question that had not directly been put to the committee, and even though I am not a member of that committee, I guess if I were, wouldn't I be a little insulted?

SENATOR DUPONT: Senator, if you are uncomfortable with that statement, I urge you to ask the rest of the members of the Economic Development committee that are sitting in this chamber, there are seven of them. If you don't want to take my word for it, then go ahead and ask each one of them.

SENATOR HEATH: Would you believe that I wouldn't embarrass them to that extent, and if they are comfortable in that regard, I don't want to disturb it, and if they are not comfortable, I don't want to embarrass them, so I will not pursue that. Thank you.

SENATOR HUMPHREY: I don't know how Senator Heath knows when he has heard a hair raising question, because it is hard to see his hair rise. I speak with some expertise in that matter. I do see a fellow whose hair has risen. I wish that I could raise such a crop myself. Well, Mr. President, one or more members of the Economic Development committee are telling us that it is a take it or leave it deal, and, I personally choose to leave it and ask to be recorded against this for this reason: I am uncomfortable with a number of terms, but first and foremost, I am uncomfortable with the idea that the states full faith and credit, not just of the 1,500 persons whose jobs are effected, but on the 1,000,000 plus people in this state are put first and foremost. If the borrower defaults to creditors coming to the state first and to the assets of the corporation second, which means not at all. This is a very good deal for the corporation, and in my view, a poor deal for the people that can be made into an accept-

able deal if the committee will just humble itself enough to tighten up the language a little bit. I hope that the members will vote for this motion to recommit.

SENATOR SHAHEEN: Senator Humphrey, would you believe that even I, who am not known for my faith and credit for Governor Gregg all the time, even I believe that we have done the necessary ground work, we have given them the necessary guidance that they need after listening to all the testimony. I think that it is very important that we vote for this because it means jobs for the state, it means protecting the economy of the state. I believe, and don't quote me on this, but I believe that we can trust the Governor's Office to come up with the best possible agreement to benefit the state of New Hampshire and the people in the north country.

SENATOR HUMPHREY: To respond, Mr. President. I respect the Senator's opinion as always. The argument seems to be that unless we do it precisely this way, precisely the way the Governor wants it, precisely the way the high and mighty Economic Development committee wants it, we can't in any way save these jobs. That is absurd. We can send it back to committee and tighten up the language and put the assets of the corporation, their assets located all over the country if not the world, they are very great assets indeed, put those first in the line of claims, and put the full faith and credit of the state of New Hampshire second. That seems to me the way that it ought to be done and we will still save the jobs.

SENATOR BASS: Mr. President, as Co-Chairman of the Economic Development committee, I would like to say that just like many of the other bills that we considered, this one was given substantial consideration, not only in the public hearing, but as Senator Dupont has mentioned, in three subsequent meetings in which we brought in various individuals from different parts of government to answer significant serious questions. Senator Heath has raised a very interesting question in that he implied that Senator Dupont was speaking alone on behalf of the committee. I would like to give any member of the Economic Development committee the opportunity right now to show me by raising their hand that they don't think that this bill has received the kind of consideration that it needs to receive. Does anyone wish to have it recommitted, if they do, I will move to do so? I think that the real question that we have to consider here today is a much larger question. The state was asked to come to the table and help a part of New Hampshire that has always fallen behind the rest of the state of New Hampshire. A part of New Hampshire that depends on a single industry and for better or for worse, the effect of losing that industry would be devastating. Those of us that live in

the southern part of the state have perhaps had little idea of what kind of devastation that would be. We came to the table and we played our part, the business involved has played their part. It looks like things are going to work out well. We worked hard on this piece of legislation and for us to back away from this commitment at this point, would send a message not only to the company involved, but also to the citizens of this state of New Hampshire, that our government is not committed to helping this state pull itself out of this economic crisis. So I urge the Senate to get going and pass this bill out and help this very important part of our state.

SENATOR HEATH: Senator Bass, are you suggesting that it is a illegitimate kind of thing for people in this body to reconsider long enough to make sure that the rest of the state has some guarantees in this so that we don't endanger many more jobs than just the ones in Berlin. In looking at it again and putting that guarantee in and moving that legislation forward, do you think that nobody in this Senate cares about the people in Berlin, but may care first about the rest of the state of New Hampshire, and then helping Berlin?

SENATOR BASS: I don't think that there is anybody in this Senate that doesn't care about the people of Berlin, as well as all of the citizens of the state of New Hampshire. I think that the message that I am trying to communicate is: (a) that Senator Dupont is not speaking for himself, he is speaking for the whole committee, and these questions were addressed by the committee and resolved by the committee. And the fact that no member of the committee feels that it is necessary to reopen this issue again, it certainly is an indication that the committee feels that this is an important priority, not only for the north country, but for everybody in this state to preserve this important part of the economy up there.

SENATOR HEATH: Do you think that the request to send a bill back to the committee to insert a guarantee that has been all but implied, would be there to make sure that that is there, that that doesn't move that legislation forward?

SENATOR BASS: That is a question that you have to ask of the committee.

SENATOR HEATH: Do you think that a one day or a two day delay to insert that in the legislation is going to hurt moving that project forward?

SENATOR BASS: Senator Heath, I don't really think that that extra language is necessary, myself, and I wouldn't vote for it; however, if the other members of the committee felt that it was necessary, that could occur. I don't happen to feel, and it is not my

opinion, that that would be the position of the committee. You are welcome to put the question to a vote. The motion will be, as I understand it, to recommit.

SENATOR HEATH: Do you think inserting legislation that puts New Hampshire in first place in case of failure, when New Hampshire's faith and credit have been put on there in any way harms that piece of legislation?

SENATOR BASS: No, it doesn't.

SENATOR HEATH: Then why, Senator, would you be opposed to doing that for the safety of the state of New Hampshire?

SENATOR BASS: There are a whole slew of different clauses and phrases and so forth, that the committee considered adding to this legislation. I think that every member of the committee had their ideas of various concerns that they had about various facets of this deal. We were assured by the executive branch and by the state treasurer that this was a sound and reasonable piece of legislation and the negotiations would be conducted in good faith and would be subject to the approval by the Governor and Council and that satisfied the committee.

SENATOR W. KING: Senator Bass, wouldn't you agree that it is highly unlikely that the state would ever have to exercise any guarantee, given the fact that this will be backed up by the first position by a \$4 billion corporation and its assets?

SENATOR BASS: That is correct, Senator King.

SENATOR HUMPHREY: I am confused by what we just heard. I have tried to ascertain whether or not the assets of James River were in first place should the borrower fail to repay. I got the impression that no, the state was in first place. Now in listening to this statement between Senator King and Senator Bass just a moment ago, I got the opposite impression. Is the state in first place or is the corporation in first place among whose assets would be called if the loan is not repayed? Who is first?

SENATOR DUPONT: One of the reasons that you do not want to put the specifics in this legislation is that this is not a car loan, this is a significant transaction that involves an extremely complex financial transaction by this company. As I said earlier, this is a complex business transaction with a company that has a complex financial structure that is already in the markets borrowing money, but has been impacted by the credit situation in this country. The reason that we are doing this is like every other business in this country that has been impacted by this recession. Their access to credit mar-

kets isn't as good as it was two years ago. There may be situations, and again, I can't answer you specifically what the final agreement will look like, but it will have to be crafted in a way that deals with the debt of the company that is already out there, it will have to be crafted in a way that puts the state in a position where it is comfortable with that. I give you my assurance, based on the assurances that have been made to us that it will not go in place unless the state is adequately protected. The most important point here, and I want everybody to hear this. We have gone to the table, and we have shook hands, and we have said that we are going to do this to save those jobs. Again, for us to back off now and say no, we want to go back and write a whole bunch of new conditions into this, is a step backwards. This has been a tedious set of negotiations and quite frankly, it needs to move forward.

SENATOR HUMPHREY: If I might respond, Mr. President. I don't know whose hands were shook, but I personally don't consider myself bound by anything. We are here to pass judgement, we are here not to act as rubber stamps for the Governor or a committee or for anyone. We are here to exercise independent judgement. I think that the Senator has answered the question clearly, notwithstanding what we just heard from this side of the room, the states assets stand first to be called upon if this loan is not paid on time. And the corporation with its \$4 billion in revenues or whatever was sited, can walk away without any liability in respect to this \$25,000,000 . . .

SENATOR DUPONT: Mr. President, I believe that is a speech rather than a question and I believe the Senator was recognized to answer a question.

SENATOR DELAHUNTY (In the Chair): I was just about to recognize the good Senator Dupont to see if he cared to ask a question of Senator Humphrey prior to that.

SENATOR DUPONT: Senator, I don't know how I can make it any more clearer, other than to say to you at the first, all is against James River Corporation. If the assets of James River Corporation are not sufficient to cover this \$25,000,000, then the states resources would be then put at risk.

SENATOR HUMPHREY: Where in this legislation does it say this?

SENATOR DUPONT: Senator, we have gone through this. It is not in the legislation, Senator. This is a complex . . .

SENATOR HUMPHREY: Well then it doesn't exist.

SENATOR DUPONT: Would you let me finish the question, Senator.

SENATOR HUMPHREY: Yes.

SENATOR DUPONT: This is a complex transaction. It has been a year in negotiation. Quite frankly, I don't think your question is crafted in a way that allows me to give a clear answer, because I have said time and time again, that it is not here, it doesn't need to be here. It can't be here, because you can't expect this type of transaction to be put into legislation and then leave here, go to bond council, go to their legal counsel, come back to the state of New Hampshire, go back to the treasurer's office and the Governor's Office and then back to us in the same form. We will be here to the year 2,000 trying to get it in a form that works. The question is either you want to do this or you don't want to do it. And you either want to help James River stay in New Hampshire and help the people that rely on that facility for jobs or you don't want to. If the answer to that is that you don't want to help them, then we will accept that.

SENATOR HUMPHREY: In any event, I would ask for a roll call vote on the motion.

Senator Blaisdell moved the question.

Adopted.

SENATOR HUMPHREY: Mr. President, did the Chair not hear the Senator ask prior to his calling of the role, did the Chair not hear Senator Humphrey asking for a roll call vote?

SENATOR BLAISDELL: On calling the question, Senator?

SENATOR HUMPHREY: I beg your pardon. Was that the motion just disposed of?

SENATOR DELAHUNTY (In the Chair): Yes, Senator.

SENATOR HUMPHREY: I beg your pardon.

A roll call requested by Senator Dupont.

Seconded by Senator Humphrey.

Question is on the motion to recommit.

The following Senators voted Yes: Heath, Humphrey.

The following Senators voted No: Oleson, W. King, Fraser, Dupont, Currier, Disnard, Roberge, Blaisdell, Bass, Pressly, Colantuono, McLane, Podles, J. King, Russman, Shaheen, Hollingworth, Cohen.

Yeas 2

Nays 18

Motion to recommit fails.

Question is on the adoption of the committee amendment.

A roll call requested by Senator W. King.

Seconded by Senator Dupont.

The following Senators voted Yes: Oleson, W. King, Heath, Fraser, Dupont, Currier, Disnard, Roberge, Blaisdell, Bass, Pressly, Colantuono, McLane, Podles, Humphrey, J. King, Russman, Shaheen, Hollingworth, Cohen.

The following Senators voted No:.

Yeas 20

Nays 0

Committee amendment adopted.

Ordered to third reading.

Senator Humphrey opposed to HB 1054 ordering to third reading.

**HB 1216**, an act allowing certain funds to be transferred to the new women's dormitory account at the New Hampshire technical institute. Education committee. Ought to Pass. Senator Disnard for the committee.

**SENATOR DISNARD:** The legislature failed to appropriate funds for paying some of the dormitory accounts for new buildings; however, all that this bill does is ask for a transfer of one account to another to meet the bond payments.

Adopted.

Ordered to third reading.

**HB 1323-L**, an act forming a study committee to develop a survey to be used by the department of education to collect and compile information regarding major school construction projects. Education committee. Ought to Pass with Amendment. Senator Disnard for the committee.

**5378L**

### **Amendment to HB 1323-LOCAL**

Amend section 1 of the bill by replacing all after paragraph IX with the following:

X. A licensed engineer designated by the board of engineers.

XI. A builder or contractor designated by the Associated General Contractors of New Hampshire.

XII. The director of the division of public health services, or designee.

XIII. A secondary grade student appointed by the governor.



SENATOR DISNARD: This is something that many Senators have looked for in the past. It establishes a committee to develop a survey so that whenever a building or in this instance, an educational building is constructed with public funds, there will be a survey conducted, periodically, to find out what problems the school district has had with that building. Have they had trouble with the foundations, the ventilation, the heating system, so that they can pass this information on so that others may know more about perhaps what companies, what to look for, how to assist our architect and contractor in building additional buildings in other communities in the future. The only amendment is on page four, adding additional people to the survey committee.

Committee amendment adopted.

Ordered to third reading.

**HB 1121-FN**, an act authorizing contracting for the operation of the impaired pharmacist program and funding the program from annual license renewal fees. Executive Departments committee. Ought to Pass. Senator J. King for the committee.

SENATOR J. KING: This bill here allows and authorizes the pharmacist group to take \$3 out of the \$20 that they pay for dues and to be used to help identify and work with the people in their own association that end up with abuse problems of one kind or another. Basically the 800 number is one of the things that they use, and for information that they pass out and following through on the people who have gotten treatment to see if they can get back into their own system again working. It does not increase the dues, it does not change anything, it just authorizes them to use part of the dues for this. It is a very small amount, about \$3,900. Thank you.

Adopted.

Ordered to third reading.

**HB 1316-FN**, an act relative to hearings before the board of nursing. Ought to Pass. Executive Departments committee. Senator Colantuono for the committee.

SENATOR COLANTUONO: This is a very simple bill, totally ignore the fiscal impact statement, because that related to the old bill in the House and that has been all wiped away. This bill simply says that when a nurse has a hearing before the Nursing Board, she is entitled to have a nurse member of the Board, rather than just a public member to hear her case. That is all that it does.

Adopted.

Ordered to third reading.

**HB 338-FN**, an act prohibiting the detention of minors in adult correctional facilities and jails. Judiciary committee. Ought to Pass. Senator Russman for the committee.

SENATOR RUSSMAN: Yes, this bill brings us into compliance with the federal statutes, 42 U.S. code 1983. They give us money for these types of things, and essentially, if we don't do it, we lose the money. It is about \$325,000. There are already beds in place for this so it is not going to cost the state any additional money. We would urge that you pass this. No one appeared in opposition to the bill.

Adopted.

Ordered to third reading.

**HB 410-FN**, an act relative to alternatives to incarceration and requiring the commissioner of the department of safety to review and make legislative recommendations on the point system as it applies to habitual offenders. Judiciary committee. Ought to Pass. Senator Russman for the committee.

SENATOR RUSSMAN: This is kind of an interesting bill because it gives alternatives to House of Correction placement. It allows for confinement at someones house through supervision so that they could actually be sentenced to the house for a year or more and also other types of intensive probation in an effort to try to eliminate some of the people in the jails and some of the crowding that exists in particular cases. The other phase of the bill is that it directs the Department of Motor Vehicles to take another look at the point system versus the habitual offender statute that we now work under, because there are some clarifications that are really necessary in the area. No one came, I don't believe, in opposition to the bill. The committee would urge passage of it.

Adopted.

Ordered to third reading.

**HB 1237**, an act revising statutory references to the New Hampshire Charitable Fund. Judiciary committee. Ought to Pass. Senator Podles for the committee.

SENATOR PODLES: Mr. President, HB 1237 changes statutory references to the New Hampshire Charitable Fund to the New Hampshire Charitable Foundation. It is a repository fund for the foundation. They make grants and promote philanthropic causes in New Hampshire by making reference to it as a foundation. It accurately picks what it is. The New Hampshire Charitable Fund admin-

isters the New Hampshire Childrens Trust Fund, which was passed in 1986 by the legislature. The committee recommends ought to pass.

Adopted.

Ordered to third reading.

**HB 422-FN**, an act relative to the use of excess campaign contributions by individuals who do not accept expenditure limitations. Public Affairs committee. Inexpedient to Legislate. Senator Bass for the committee.

SENATOR BASS: Mr. President, this bill is essentially the same as a bill, well the same subject matter as a bill that was introduced by Senator King from Manchester. The committee has already dealt with this issue and sent it to the House. The committee therefore, urges the Senates adoption of its report of inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

**HB 564-FN**, an act enabling towns and cities to establish heritage commissions. Public Affairs committee. Ought to Pass. Senator Bass for the committee.

SENATOR BASS: Mr. President, this bill allows cities and towns, enables cities and towns to establish heritage commissions in exactly the same fashion which they now establish conservation commissions. It will not interfere with cities and towns that have historic districts. It is not related essentially to that subject. There is a lot of interest in New Hampshire communities in the value and the importance of man-made antiquities as well as environmental factors in municipalities. Some cities and towns already have sort of adhoc heritage commissions. The committee urges your adoption of the committee report of ought to pass so that all towns and cities can take advantage of this option.

Adopted.

Ordered to third reading.

**HCR 25**, an act encouraging the operators of cable television systems to utilize a portion of their capacity to deliver commercial-free educational programming. Public Affairs committee. Ought to Pass. Senator Podles for the committee.

SENATOR PODLES: HCR 25 encourages operators of cable television to provide free cable service to the schools and urges the schools to utilize its commercial free educational programs. The committee recommends ought to pass.

Adopted.

Ordered to third reading.

**HB 1204**, an act requiring the director of motor vehicles to notify any seriously injured person when the director conducts a license revocation or suspension hearing regarding a motor vehicle accident involving a fatality or serious injury. Transportation committee. Ought to Pass. Senator Currier for the committee.

**SENATOR CURRIER:** This bill adds to the current statute a provision for notifying those who are seriously injured in a motor vehicle accident. Notification of a hearing be conducted under the provisions of the sections regarding serious injury. Any serious injury of a person shall receive notice of the hearing. We were told during the hearing process of a couple of situations where people were not in fact notified of the hearing and so forth and then actually being denied, because of the small hearing rooms in the Department of Safety, eligibility to be present during these hearings. This bill corrects a situation which the committee agrees is a very serious nature and should be rectified by the provisions by adding serious injury to the notification process of this.

Adopted.

Ordered to third reading.

**HB 1480-FN**, an act requiring persons who default on court appearances for motor vehicle offenses to pay witness fees for law enforcement officers. Transportation committee. Ought to Pass. Senator Pressly for the committee.

**SENATOR PRESSLY:** Members of the Senate, the analysis is very clear and very precise and the committee felt that is exactly what it does do. One compelling argument for this legislation is the fact that the person who defaults, knows full well what is happening because they have requested this procedure. So there will never be a situation where someone can say, 'I did not know'. They had to actually check the box to request this procedure. They can avoid having to pay this fee by just notifying the courts. Apparently, there are big problems in that many great expenses, many people come for these hearings and then the primary players do not show up. This is an effort to encourage them to show up and they will be given full notice as to what will happen. The committee recommends ought to pass.

Adopted.

Ordered to third reading.

**HB 1282-FN**, an act relative to the transfer of registration between owned and leased vehicles. Transportation committee. Ought to Pass. Senator Oleson for the committee.

Recess.

Out of recess.

**SENATOR OLESON:** This is a very simple, up front bill with a little bit of housekeeping built in. At the present time what might happen is that if you happen to have an accident in your own automobile, you go to the dealer and he will rent you another car, which of course is insured. But all the time that you have this car in the garage for a month or so, it is being insured and you are still paying your premiums, so it is kind of paying two premiums, if you like. This way if you have an accident, you can transfer your insurance onto the car that you have been lent or that you are renting and therefore, there will be no double dipping as far as the insurance companies are concerned.

Adopted.

Ordered to third reading.

**HB 1210**, an act naming the Karner Blue butterfly the state butterfly. Wildlife and Recreation committee. Ought to Pass. Senator Cohen for the committee.

**SENATOR COHEN:** By naming the Karner Blue butterfly the state butterfly makes a statement that the state of New Hampshire cares about this endangered species. It is rare in the world, and it is unique to this particular region. It sends a message to school kids on the beauty and virility of all species. The butterfly is indigenous to New Hampshire and happens to thrive near industry and power lines. It suggests the capability of economic development with environmental preservation. It sends a good message. We recommend it ought to pass. Thank you.

**SENATOR OLESON:** What kind of a looking thing is this butterfly? I don't want to walk around and step on it not knowing that I am stepping on the state butterfly?

**SENATOR COHEN:** It is blue. I am not sure that I understood the question.

Adopted.

Ordered to third reading.

**HB 1305**, an act permitting the carrying and selling of antique gun canes. Wildlife and Recreation committee. Ought to Pass with Amendment. Senator McLane for the committee.

5384L

**Amendment to HB 1305**

Amend the title of the bill by replacing it with the following:

**AN ACT**

permitting the carrying and selling of  
antique gun and sword canes.

Amend RSA 159:16 as inserted by section 2 of the bill by replacing it with the following:

159:16 Carrying or Selling Weapons. Whoever, except as provided by the laws of this state, sells, has in his possession with intent to sell, or carries on his person any stiletto, switch knife, [sword cane, pistol cane,] blackjack, dagger, dir knife, slung shot or metallic knuckles shall be guilty of a misdemeanor; and such weapon or article so carried by him shall be confiscated to the use of the state.

**AMENDED ANALYSIS**

This bill permits the sale of pistol canes and sword canes.

SENATOR MCLANE: As though we haven't had enough fun today, here I am standing up on a bill that Al Rubega favors. The essence of this bill is in the word antique. Antique is defined as 'any instrument built before 1898'. The present pistol canes and sword canes that exist in the state of New Hampshire have no parts or ammunition available, and they don't work. What was discovered, that antique dealers were selling them when they were listed under RSA 159:16 as being against the law of the state to sell or have in the possession, with intent to sell. So the antique dealers in guns have asked us to take out sword canes and pistol canes, but I want you to know that it is still against the law to carry a stiletto, a switch knife, a black jack, a dagger, a dirk knife, a sling shot or metallic knuckles.

SENATOR COLANTUONO: I just want you to know that when I originally looked at the amendment this morning, I had some concerns about it. I spoke to some other Senators, but after reading the full bill and discussing it, I have no problems with the bill.

Committee amendment adopted.

Ordered to third reading.

**HOUSE MESSAGE**

The House of Representatives concurs with the Senate in its amendment to the following entitled Bill sent down from the Senate:

**HB 1148**, relative to technical corrections in certain tax laws.

## REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House Bills:

**HB 1100-FN-LOCAL**, establishing a housing assistance trust fund.

**HB 1148**, relative to technical corrections in certain tax laws.

**HB 1328-FN**, relative to the fiscal responsibilities of the county commissioners and the county convention for capital expenditures in Rockingham county.

## HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bills sent down from the Senate:

**SB 394**, relative to the jurisdiction of the labor department over self-insured workers' compensation programs.

**SB 421-FN**, relative to fireworks.

Recess.

Out of recess.

## ANNOUNCEMENTS

### RESOLUTION

Senator Currier moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that the bills ordered to third reading be read a third time by this resolution, all titles be the same as adopted and that they be passed at the present time; and that when we adjourn, we adjourned until Tuesday, March 24, 1992 at 1:00 p.m.

Adopted.

### RESOLUTION

Senator Russman moved that the business of the day being completed, the Senate now adjourn until March 24, 1992 at 1:00.

Adopted.

## LATE SESSION

### Third Reading and Final Passage

**HB 338-FN**, an act prohibiting the detention of minors in adult correctional facilities and jails.

**HB 410-FN**, an act relative to alternatives to incarceration and requiring the commissioner of the department of safety to review and make legislative recommendations on the point system as it applies to habitual offenders.

**HB 564-FN**, an act enabling towns and cities to establish heritage commissions.

**HB 1054-FN**, an act relative to the industrial development authority.

**HB 1121-FN**, an act authorizing contracting for the operation of the impaired pharmacist program and funding the program from annual license renewal fees.

**HB 1204**, an act requiring the director of motor vehicles to notify any seriously injured person when the director conducts a license revocation or suspension hearing regarding a motor vehicle accident involving a fatality or serious injury.

**HB 1210**, an act naming the Karner Blue butterfly the state butterfly.

**HB 1216**, an act allowing certain funds to be transferred to the new women's dormitory account at the New Hampshire technical institute.

**HB 1237**, an act revising statutory references to the New Hampshire Charitable Fund.

**HB 1282-FN**, an act relative to the transfer of registration between owned and leased vehicles.

**HB 1305**, an act permitting the carrying and selling of antique gun and sword canes.

**HB 1316-FN**, an act relative to hearings before the board of nursing.

**HB 1320**, an act extending the time for recording a foreclosure deed and affidavit after a foreclosure sale when such recording is prevented by order or stay of any court or law or the United States Bankruptcy Code.

**HB 1323-L**, an act forming a study committee to develop a survey to be used by the department of education to collect and compile information regarding major school construction projects.

**HB 1480-FN**, an act requiring persons who default on court appearances for motor vehicle offenses to pay witness fees for law enforcement officers.



**HCR 25**, an act encouraging the operators of cable television systems to utilize a portion of their capacity to deliver commercial-free educational programming.

Adopted.

Adjournment.

*March 24, 1992*

The Senate met at 1:00 p.m.

A quorum was present.

The prayer was offered by the Rev. Dawn Berry, Senate guest Chaplain.

*Creator God, in the beginning you called the worlds into being, established the boundaries of the sea, and brought forth vegetation of the earth. You beheld your creation and said that it was good. You created humankind, male and female, in your image, entrusting to us the care of your good earth. We give you thanks for the majesty of New Hampshire's mountains, for the rushing water and quiet ponds, for the rich farmland and dense woods. As these Senators begin their work on legislation relating to the environment and agriculture, hold them in your care that they might hold the natural resources of this state in their care. Be with them in the long hours and bless them in their life and work together in this chamber.* Amen

Senator Pressly led the Pledge of Allegiance.

## INTRODUCTION OF GUESTS

### HOUSE MESSAGE

### SENATE CONCURS WITH HOUSE AMENDMENT

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House of Representatives asks the concurrence of the Senate:

**SB 300**, reapportioning the New Hampshire congressional districts.

Senator Roberge moved concurrence.

Adopted.

## COMMITTEE REPORTS

**HB 1442-L**, an act relative to a census of school age children. Education Department. Ought to Pass. Senator J. King for the committee.

**SENATOR J. KING:** HB 1442 reviews a requirement that local districts take an annual or biennial school census of all the children, from

birth to 18, every odd number year. It also requires that the school district file its census with the states board. The committee learned from them that the census does not benefit the state board, they take the information and store it. They realize that the locals don't use it, as some of the people there have told us. The law now in affect, requires that they do this. So this law takes the requirement out, that they have to do it. It does not stop them from doing it, if they want to. It is no longer necessary. We ask that you go along with HB 1442. Thank you.

Adopted.

Ordered to third reading.

**HB 263-FN**, an act establishing a fee structure for used oil marketers. Environment committee. Ought to Pass with Amendment. Senator W. King for the committee.

5471L

#### **Amendment to HB 263-FN**

Amend RSA 147-B:9, II as inserted by section 4 of the bill by replacing it with the following:

**II. The following shall not be classified as marketers pursuant to RSA 147-B:2, VIII-c:**

**(a) Municipalities which collect used motor oil for recycling.**

**(b) Used oil generators and transporters who transport used oil received only from generators, unless they transfer their used oil directly to a person who burns it for energy recovery.**

**(c) Used oil generators and transporters who collect used oil only from generators and transfer used oil to incidental burners. Persons who burn some used oil fuel for the purposes of processing or other treatment to produce used oil fuel for marketing shall be considered to be burning incidentally to processing.**

SENATOR W. KING: This bill establishes a fee for people who market used oil. The fee is calculated at two dollars a U.S. gallon. The amendment that you see before you has to do with generators who just transport that oil to someone else to be burned, rather than marketing it.

SENATOR DISNARD: Senator King, I noticed in the fiscal note, if the fiscal note is true, once again, \$90,000; the following year a \$100,000, the next year \$110,000 additional fees being passed on. Now is the fiscal note correct?

SENATOR W. KING: Yes, the fiscal note is correct. Right now, Senator Disnard, oil that is not used is being taxed at a certain rate to go into this fund as well. All this does, is make those people who market

used oil, pay a fee as well. That money will, one hopes, would be used for a legitimate purpose. It is going to be put into the Hazardous Waste Clean Up Fund.

SENATOR DISNARD: Once again, is the state or the federal government not following what its responsibilities are, and the poor little guy's going to have to pay more?

SENATOR W. KING: No, the poor little guy is going to have to pay something under the provisions of this bill. The poor little guy, meaning one of four large marketers of used oil in the state of New Hampshire. They are going to have to contribute, given the fact, that they are dealing with a substance that is generally far more hazardous than oil that is not used, because of the level of heavy metals, the levels of toxins in that oil. It is a small thing to ask that they participate in the funding of the Hazardous Waste Clean up Fund.

SENATOR DISNARD: Would you agree that this is an additional fee that someone is going to have to pay?

SENATOR W. KING: Absolutely.

SENATOR HEATH: Senator King, isn't this punishing the people who are providing a way to use this and to keep it out of the ground?

SENATOR W. KING: There was no opposition by the folks who would be affected by this, because the fee is relatively small; and as a profit margin in that it is fairly considerable, because of the fact, that they are in fact, providing a service to those who want to get rid of their used oil.

SENATOR HEATH: Senator King, isn't this a tax, not a fee? It doesn't have a direct applicability to an activity of government?

SENATOR W. KING: This has a direct applicability to the Hazardous Waste Clean Up Fund, because used oil is a significant source of Hazardous Waste Clean-up.

SENATOR HEATH: In direct proportion to the fee?

SENATOR W. KING: To the amount? Well, actually, the answer to that is nowhere near the direct proportion to the fee. The fact is, is that \$90,000 wouldn't even cover one clean up.

SENATOR HEATH: So wouldn't that put it in the category of a tax, rather than a fee?

SENATOR W. KING: No. I guess it would put it in the category of a fee which is not sufficient to cover the total cost of the environmental contamination that could be caused by the substance.

SENATOR HEATH: By the activity of the users?

SENATOR W. KING: By the activity of the users, yes.

SENATOR COLANTUONO: Senator King, did it come up in the committee hearing at all, how often or how many times in the recent past that there has been an expenditure from the Hazardous Waste Clean up Fund to deal specifically with a used oil spill?

SENATOR W. KING: No.

Committee amendment adopted.

Ordered to third reading.

Senator Colantuono opposed to the final passage of HB 263.

Senator Heath opposed to HB 263.

**HB 716-FN**, an act relative to establishing a committee to study septic-related issues. Environment committee. Inexpedient to Legislate. Senator Russman for the committee.

SENATOR RUSSMAN: We just thought that somehow we could do without a committee to study why septic systems failed, and reviewing inspection procedures. DES has an ongoing implementation program, relative to upgrading and trying to modernize those types of issues. We just thought that there were going to be enough study committees this summer without this one, so we voted inexpedient to legislate. Thank you for your kindness.

Committee report of inexpedient to legislate is adopted.

**HB 1242**, an act establishing a study committee on certain current use issues. Environment committee. Ought to Pass with Amendment. Senator Russman for the committee.

**5473L**

### **Amendment to HB 1242**

Amend paragraph I(a) as inserted by section 1 of the bill by replacing it with the following:

(a) Five house members, appointed by the speaker of the house, from the following committees:

(1) Two members of the environment and agriculture committee, one of whom shall serve as chairperson of the study committee.

(2) One member of the municipal and county government committee.

(3) One member of the ways and means committee.

(4) One member of the resources, recreation and development committee.

Amend paragraph I as inserted by section 1 of the bill by inserting after subparagraph (b) the following new subparagraph:

(c) Three members of the public, appointed by the governor.

SENATOR RUSSMAN: This is an important bill that came over from the House, relative to current use. Hopefully, this study committee will put to rest some of the issues surrounding it; whether or not we should have it, how it should be looked at, whether or not the penalty for taking your land out of current use should be increased, and those types of issues. It was a compromise by all the parties involved. So we would urge passage of the amendment and the bill itself.

Committee amendment adopted.

Ordered to third reading.

Recess.

Senator Delahunty in the Chair.

**HB 1265-FN**, an act regulating small motor mineral dredging and panning. Environment committee. Ought to Pass. Senator W. King for the committee.

SENATOR W. KING: HB 1265 establishes standards for the use of small motor dredges for gold panning, dredging, or however you want to describe it. It is a response to a number of problems that have cropped up in the last couple of years in the northern part of the state where a significant amount of this recreational activity takes place. We urge its passage.

SENATOR HOLLINGWORTH: Senator King, are you telling me that there is gold in them there hills?

SENATOR W. KING: There is gold in them there hills. Yes. I heard that it is in the Saco River, right near Rogers' House.

SENATOR HEATH: Right in the Baker River, a lot of gold. You ought to get up there before it is all gone.

Adopted.

Ordered to third reading.

**HB 1426**, an act authorizing water users registered and reporting their use to the division of water resources to continue such use for the 1992-93 biennium. Environment committee. Ought to Pass. Senator Hollingworth for the committee.

SENATOR HOLLINGWORTH: In the 1990 session, HB 1376 was passed, and created the Public Water Rights committee. Unfortunately, the committee found that the task was too great and that they could not complete it in one year. Therefore, this bill would extend its life and add new members to the committee. It also would allow for the continued withdrawal of the public water, by the large water users, because there was some discussion, until the end of this commit-

tee. It takes care of the gap that was created by the time and date of reporting, and provides authorization for the withdrawal until June of 1993. There was no opposition to the bill in either the House or the Senate.

SENATOR NELSON: Senator Hollingworth, I just didn't quite hear everything that you said. It is a study committee . . . in other words, they are authorized to take water through June of 93. The question is, I didn't hear who was studying this?

SENATOR HOLLINGWORTH: They are studying the Public Water Rights.

SENATOR NELSON: I don't know who 'they' is.

SENATOR HOLLINGWORTH: It is a study that was established by the legislative process. They are looking into the right to draw water from the rivers and lakes.

Adopted.

Ordered to third reading.

**HB 585-FN**, an act recodifying the laws relative to emergency medical services. Executive Departments committee. Ought to Pass with Amendment. Senator Currier for the committee.

**5275L**

#### **Amendment to HB 585-FN**

Amend RSA 151-B:3, II(k) as inserted by section 1 of the bill by replacing it with the following:

(k) One member from the New Hampshire Paramedic Association.

SENATOR CURRIER: This bill is the result of a three year ongoing study, regarding the statutes regulating the Emergency Medical Service provisions in the state laws. It was a study committee that was done by the Emergency Medical Service Coordinating Board, representing the districts throughout the state and the regions throughout the states. The bill had been studied in the House for one session before it actually made its way to the Senate. The Senate amendment, which is on page, I believe, three, is a minor technical change that was noted in the hearing process that the Paramedic Society, which is really called the Paramedic Association. The amendment which is on page three, just changes that reference. The committee urges your approval of ought to pass with amendment.

Committee amendment adopted.

Ordered to third reading.

### ANNOUNCEMENTS

SENATOR HOLLINGWORTH (Rule #44): Last week I testified on the rate cap bill in the House. In my doing so, the Governor had requested to appear before the committee and testify on the bill before I did. I think that at that time that there was a great deal said by the Governor that was not appropriate. I reluctantly come before this committee to state that, but it is the only way that I can let my feelings be known. Unfortunately, his position was the only one that seemed to be carried most of the time and his personal attack on me. I had no problem with him stating, I don't like this legislation. But he went on in great length, rather hysterically, attacking me personally, and attacking my motivations for the bill. I would like to stand before you and say that if anyone has any motivations, that you can look at what came out of the report on what the Governor took from NU, from their officers last week. The report that came out of Mary Chamber's Office, that clearly showed that the Governor received on the same day from the NU officials, just prior to the rate agreement, and just after the rate agreement, substantial funds to his campaign. I also have for you here today, this is the report of the junk bond dealers who donated to the Governor's campaign. Also, you will receive in the next day or so, some information that is coming out about the salaries that are being paid to the NU officials. The top official is receiving almost .5 million dollars a year in salary alone. So when I am personally attacked, I unfortunately feel, that the only way that I can answer the attack on me is by saying, let's talk motivation, Governor. I get \$100 a year and I have not received any contributions from any of the people that you have. My motivations are for the ratepayers of this state and for the businesses of this state. I also would like to have you look at the Sunday Republican, which gives a report of how NU is doing in Massachusetts and what it is costing those ratepayers down there. Thank you.

### RESOLUTION

Senator Delahunty moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that the bills ordered to third reading be read a third time by this resolution, all titles be the same as adopted and that they be passed at the present time; and that when we adjourn, we adjourned until Thursday, March 26, 1992 at 1:00 p.m.

Adopted.

**RESOLUTION**

Senator Currier moved that the business of the day being completed, the senate now adjourn until March 26, 1992 at 1:00 p.m.

Adopted.

**LATE SESSION**

**HB 263-FN**, an act establishing a fee structure for used oil marketers.

**HB 585-FN**, an act recodifying the laws relative to emergency medical services.

**HB 1242**, an act establishing a study committee on certain current use issues.

**HB 1265-FN**, an act regulating small motor mineral dredging and panning.

**HB 1426**, an act authorizing water users registered and reporting their use to the division of water resources to continue such use for the 1992-93 biennium.

**HB 1442-L**, an act relative to a census of school age children.

Adjournment.

*March 26, 1992*

The Senate met at 1:00 p.m.

A quorum was present.

The prayer was offered by the Rev. David P. Jones, Senate guest Chaplain.

*Whether to succeed as a community means to secede from another community; or whether it is good to proceed from the one Senate over to the corner office, or from the corner office down to that other Senate; or whether the Concord Gang really believes that the pledge is a plague, I just don't know, but on all of these matters, you must decide — and on some of them, today. So let me pray for you. God of grace and God of glory, behold and bless these specially chosen twenty-four, and help them to know what to do today. Let them succeed in their service, proceed in their usefulness, and let their first pledge be to you.*

*Amen*

Senator Hough led the Pledge of Allegiance.



## INTRODUCTION OF GUESTS

Recess.

Out of recess.

**SENATOR DUPONT:** The process today will be that we will do the regular calendar #22, and then we will take up #22A which is the budget calendar, after we are through with our regular calendar.

## REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled Senate Bill:

**SB 300**, reapportioning the New Hampshire congressional districts.

## COMMITTEE REPORTS

**HB 534-FN**, an act amending the habitual offender penalties to provide for special alternative incarceration. Judiciary committee. Ought to Pass. Senator Russman for the committee.

**SENATOR RUSSMAN:** This bill, 534, is a bill which allows the judicial system to treat DWI related multiple offenders somewhat different than non DWI related offenders. I think the most significant part of this bill is that Mike Johnson who is the President of the New Hampshire County Attorney's Association, which represents virtually all the prosecutors, county attorneys in the state, came to speak in favor of this bill. The present system as it now is, is not working well and they don't like this system. They have come to us and have asked us to change it and to try to make it more realistic so that we treat people that perhaps have a number of speeding tickets, different than people that have DWI offenses. No one spoke in opposition to the bill. I am sure that if for example, Mothers Against Drunk Driving or someone like that were opposed to it, they would have been there to see that it was voiced, but that was not the case. We think that the bill is a good bill. It still allows the Judiciary to put someone in jail for up to a year, and that would be the most realistic way to deal with it. We urge passage of the bill.

**SENATOR COLANTUONO:** I considered a minority report, but I guess there is no practical difference between just standing up and urging a vote against this bill. I am very much opposed to this bill, because I think that it weakens one of the best laws that we have in terms of preserving highway safety. The habitual offender law has been on the books for many, many years. For all those many years, the ultimate sanction for people who violate this law and go out and drive after they have been certified an habitual offender, is that they have to serve a mandatory one year in jail. This bill for the first time,

would change that rule. I think, that it would have potentially disastrous effects for the people of the state. We have been slowly eroding this habitual offender law over the years. Several years ago, we passed a law which took driving after suspension from the major category, which you only needed three of to make you a habitual offender, down to the minor category, so we took that out. Several years ago, we also made a change in the number of years that you could lose your license for being a habitual offender. Before, you lost your license for four years, period. Then several years ago, we passed an amendment which said that the Division of Motor Vehicles had the discretion to take it from one to four years. So we introduced some laxity there. But there was still always that ultimate sanction that no judge had the discretion to change, that if you thought so little of the system and so little of the laws, and so little of your fellow human beings in this state, that you went out and continued to drive after the Motor Vehicle Department has taken away your privilege to do so, you had to go and spend a year in jail. That is the deterrent that lets this law work. This bill takes away that sanction for any persons who have been adjudicated an habitual offender, and who do not have a DWI or a misdemeanor on their underlying automobile record. Now that could include someone who has three reckless driving convictions within the last five year period. Those people are a menace and should not be on the roads. That could include someone with 12 speeding tickets. I think that you all understand that people who habitually speed, are just as or maybe even more dangerous than someone who goes out and gets drunk one time and drives on the road. Speed is involved in more fatal accidents, I would submit, than does reckless driving. So I think the public does not want us introducing more legislation that makes it softer for people who violate the law. I think that this is a bad idea. I will tell you the reason why the law enforcement community or at least the prosecutors didn't speak against it, is because these cases frankly, add to their work load. They are not as interesting as some of the other crimes that they have to prosecute. But it is important for public safety and it is important for the people of the state to have the current system, and I would urge a vote against this.

SENATOR HOLLINGWORTH: Yes, I would like to speak in favor of the bill. As you well know the cost of incarceration is going up, it is \$2,000,000 right now. That is not just the reason why we felt that this was an important piece of legislation, but that certainly weighed into the consideration. This does not affect any charges that were felonies or misdemeanors, and it was supported by the County Prosecutors and the County Corrections Offices. Certainly they would not support anything that they felt was soft on crime. Also, it does

allow for a year in jail. I think that it is well to leave it up to the judge to determine the reason why someone might be driving, should it be because he is going to work or his wife is sick or some other reason, and that is what this bill will do.

Adopted.

Ordered to third reading.

Senators Colantuono and Heath are opposed to HB 534-FN.

**HB 783-FN**, an act relative to motor vehicle records and DWI convictions. Judiciary committee. Ought to Pass. Senator Podles for the committee.

SENATOR PODLES: Mr. President, HB 783 is the bill that is dated the 23rd of January, 1992 and the number is 4510H, just in case you have the wrong bill in front of you. There have been bills that have been passed out that have been the wrong bill. The correct one is #4510H. It is an amended bill. It requires a prosecutor of a DWI case to present the judge with a certified copy of the defendants record of motor vehicle convictions in New Hampshire and other states prior to sentencing. This brings accountability, and it is to make sure that the judge takes the drivers record into consideration when opposing a sentence. The committee recommends ought to pass.

SENATOR DUPONT: Senator Podles, did you indicate that the copies that the members have are incorrect?

SENATOR PODLES: No, they are correct. I just wanted to make sure.

Adopted.

Ordered to third reading.

**HB 1163**, an act relative to a public employee's right to require that a nonpublic session under the right-to-know law be open to the public. Judiciary committee. Ought to Pass. Senator Hollingworth for the committee.

SENATOR HOLLINGWORTH: The committee on Judiciary moves ought to pass on this bill, HB 1163. The bill merely states clearly that an employee entitled to a hearing, that individual can request that hearing, it can be opened to the public. There was no opposition, and in fact, the New Hampshire School Board Association and the Municipal and County Government Association were in full support of this bill, and it is not often that they agree on anything. Common Cause was also in support of this bill. The important thing to remember is that this bill does not allow a hearing when a person is not entitled to one. It does not change the standard already in place for a

nonpublic session such as contract negotiations. It also does not add any additional rights. This bill is needed because there has been incidents where employees have the right and have been denied the right, to have a public hearing.

Adopted.

Ordered to third reading.

**HB 1297**, an act establishing a committee to study the issue of protecting personal information. Judiciary committee. Inexpedient to Legislate. Senator Podles for the committee.

**SENATOR PODLES:** Mr. President, the study committee on HB 1297 would have no useful purpose or focus. A Presidential Privacy Commission has studied personal information, and concluded that direct marketers have appropriate procedures in place to serve consumers. The committee recommends inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

**HB 1359**, an act relative to the confidentiality of police personnel files in criminal cases. Judiciary committee. Ought to Pass. Senator Hollingworth for the committee.

**SENATOR HOLLINGWORTH:** The committee on Judiciary would like to ask your support of ought to pass on HB 1359. This bill was asked for by the Police Chiefs Association. It makes it clear that a police officer who is serving only as a witness or as a prosecutor, his personal files cannot be opened, unless there is something determined by the judge that is relevant to the case. We think that this is a good piece of legislation and we would ask for your support.

Adopted.

Ordered to third reading.

**HB 1440-FN-L**, an act relative to preparation of master jury lists by the department of safety from drivers' licenses lists. Judiciary committee. Ought to Pass. Senator Colantuono for the committee.

**SENATOR COLANTUONO:** The Judiciary committee recommends ought to pass on HB 1440. This bill changes the way that jury lists are compiled in order to cover more people. Right now the jury lists are compiled from the voting list and there are a lot of people who don't vote, but almost every adult of driving age has a drivers license. So this bill requires the Motor Vehicle Department to submit a list of the drivers to the court system to use as jury list, and we will, hopefully, get a much larger pool of jurors from this method.

**SENATOR HEATH:** Senator Colantuono, is this to enlarge the present list or is it just going to be the sole list that they draft from?

SENATOR COLANTUONO: This is going to replace the method, so it will do both. It will enlarge and replace.

SENATOR HEATH: Does that tend to eliminate classes like the elderly, and some handicapped people from being in that jury pool?

SENATOR COLANTUONO: No. The provision says that it will come from an official record of persons who hold a current New Hampshire driver's license or Department of Safety I.D. card. So any person who doesn't qualify for a driver's license, but gets an I.D. card, will be on the list.

SENATOR HEATH: Senator, isn't it unlikely that a person is going to request an I.D. card for the purpose of being in the jury pool, not knowing about the process and if they know, perhaps not wanting to serve. But being an eliminating factor for a couple of classes of individuals that make up what we would like to call a jury of our peers?

SENATOR COLANTUONO: Well, I think that people get I.D. cards for other reasons than just to serve on a jury. Any beyond that, I believe, that any person who presented themselves to the Clerk of the Court to volunteer for jury duty, should be added to the list, as I understand it.

SENATOR HEATH: Isn't jury duty a little less than voluntary?

SENATOR COLANTUONO: Yes, except that this bill will put more people in the pool that are presently in the pool.

SENATOR ST. JEAN: Senator Colantuono, my question deals along the same line as Senator Heath's. Was any consideration given to using the telephone books as a way of getting jurors versus drivers licenses?

SENATOR COLANTUONO: There was no discussion of that in the committee hearing.

SENATOR ST. JEAN: I would assume that you would get more of an inclusive list using the telephone book versus the drivers list, if that is in fact the purpose of getting more individuals on jury duty.

SENATOR COLANTUONO: I just heard from my neighbor here, that there are a lot of people with unlisted phones. I can think of a relative of mine, a widow, who for 25 years was listed in the phone book under her former deceased spouses name. Then you get people who move around a lot in the phone books. I think that this is a much more up-to-date method. That is why the House committee put it through the way that is was, and then we concurred.

SENATOR ST. JEAN: Thank you.

SENATOR PODLES: Senator Heath, just for your information, the Safety Department has told us that they have 335,000 more licenses than registered voters.

SENATOR HEATH: I guess my response is, that I have no problem with this bill, it enlarges the pool. My problem is that I would like to get everybody in, and an enlarge isn't necessarily better. If there were certain randomness, a smaller list, but more random would actually be better than a larger list that accidentally excludes some particular classes of citizens. Now I understand that it is a quantum leap forward to get that many more names, but if there is a class of elderly who have given up their licenses and sight handicaps, I am thinking of, particularly, those might be two excluded classes that you might in the future look someday to add those people into that pool.

SENATOR PODLES: Well as the Senator indicated, they can apply for an I.D. card.

SENATOR HEATH: But that is a voluntary action.

SENATOR PODLES: It is.

SENATOR HEATH: Jury duty is not a voluntary and not always a desired activity, but it is necessary nonetheless, that we reach in and draw from the whole society to be judged by our peers.

SENATOR J. KING: Just a short statement. I noticed that one of the sponsors is Representative Robert Murphy, who spent 20 years as a Clerk in the Court in Hillsborough county and based on that alone, I would go along with the bill.

SENATOR ROBERGE: Senator Colantuono, would you believe, that I believe, that someone who doesn't take the responsibility to register to vote, should not be chosen for jury duty?

SENATOR COLANTUONO: I believe that.

Adopted.

Ordered to third reading.

Recess.

Out of recess.

**HB 762-FN**, an act to incorporate the inhabitants of the northeastern part of Laconia into a separate town to be known as Weirs Beach, with all the privileges and immunities of other towns in this state. Public Affairs committee. Majority Report: Inexpedient to Legislate. Senator W. King for the committee. Minority Report: Ought to Pass with Amendment. Senator Podles for the committee.

5443L

**Amendment to HB 762-FN**

Amend the bill by replacing sections 3-5 with the following:

3 City of Laconia. All moneys or other personal or real property on hand or now due or that shall in the future become due to or be the property of the city of Laconia by virtue of any grant or other act done or performed before January 1, 1994, shall become or remain the property of the city of Laconia, except for those items enumerated in sections 5 and 6 of this act.

4 Appointment of Bonded Indebtedness. All bonded indebtedness of the city of Laconia, together with interest on such bonds, existing on January 1, 1994, shall be a charge against the city of Laconia and the town of Weirs Beach in proportion to the equalized valuation of the city and the town as provided in RSA 33:4-b.

5 Community Land and Buildings. All land and structures located within the boundaries of Weirs Beach which are the property of the city of Laconia, the Laconia water works or any other municipal department or entity, held or used for public or community purposes, together with supplies and equipment in such structures or on such land, shall become the property of the town of Weirs Beach as of January 1, 1994. Liability for the preservation, maintenance and operation of said property shall be that of the town of Weirs Beach except for such liability relating to property used in the provision of water and sewer services, which shall fall within the provisions of section 7 of this act. The town of Weirs Beach shall assume any rental, leasehold or other legal obligations formerly assumed by the city of Laconia for the use of said property prior to January 1, 1994, except as such obligations may otherwise be apportioned.

Amend the bill by replacing sections 7-12 with the following:

7 Water and Sewer Service. The city of Laconia, through the Laconia water works and any other necessary entity, shall continue to provide water and sewer services to the inhabitants of the town of Weirs Beach as those services have been provided prior to January 1, 1994, for a period of 5 years from January 1, 1994, at rates which are equal to those charged property owners within the city of Laconia. The city and town may within the 5-year period enter into any other fair and equitable contractual agreement for the provision of water and sewer services to inhabitants of Weirs Beach. The city of Laconia, through the Laconia water works and any other necessary entity, shall continue to enjoy the right to use or the water pumping station located in Weirs Beach and any other property now and in the future used in the provision of water and sewer services, without charge, for as long as it continues to provide the said services to inhabitants of Weirs Beach. The preservation, maintenance and op-

eration of such property shall be the obligation of the city of Laconia through the Laconia water works or any other necessary entity, so long as its right to use such property remains in effect. If no contractual agreement for the provision of water and sewer services to inhabitants of Weirs Beach is entered between the city of Laconia and the town of Weirs Beach on or before January 1, 1999, the city may terminate its provision of water and sewer services to inhabitants of Weirs Beach. Notwithstanding any other provision of this act, the town of Weirs Beach may at any time after January 1, 1994, elect to discontinue water or sewer service, or both, to some or all of its inhabitants by the city of Laconia, at which time the obligation of the city of Laconia to provide water and sewer service to those inhabitants shall cease.

8 School District Established. That part of the city of Laconia which is incorporated into the town of Weirs Beach by section 2 of this act is organized into the Weirs Beach school district which shall become effective July 1, 1994. The school district shall be assigned to school administrative unit number 30 on July 1, 1994, provided that the state board of education shall assign the district to another school administrative unit if so requested by the school district on or before July 1, 1999. The boundaries of the Laconia school district shall be as formerly established, less those lands incorporated into the Weirs Beach school district.

#### 9 Tuition.

I. The Weirs Beach school district shall pay tuition to the Laconia school district for all pupils who are required by statute to be educated at public expense by the Weirs Beach school district in accordance with the provisions of RSA 194:27. For the first 5 years, however, tuition payments, in addition to those under RSA 194:27, shall be made in the following amounts:

- (a) For the fiscal year ending June 30, 1995, \$1,500 per student.
- (b) For the fiscal year ending June 30, 1996, \$1,200 per student.
- (c) For the fiscal year ending June 30, 1997, \$900 per student.
- (d) For the fiscal year ending June 30, 1998, \$600 per student.
- (e) For the fiscal year ending June 30, 1999, \$300 per student.
- (f) For the fiscal year ending June 30, 2000, \$0 per student.

II. The Laconia school district shall be required to accept all pupils sent to it by the Weirs Beach school district through the 1998-1999 school year and may continue to receive students after the 1998-1999 school year.

10 Planning and Zoning. The zones into which properties located within the boundaries of the town of Weirs Beach are divided on January 1, 1994, shall remain in effect unless they are changed by the town as provided by statute. The selectmen of the town of Weirs Beach shall adopt interim building codes, provided that such codes



meet minimum BOCA and Life Safety Codes, and shall adopt an ordinance imposing interim regulations on development as provided in RSA 674:23.

11 Anticipation of Taxes. The treasurer of Weirs Beach, elected at the initial meeting provided by section 12 of this act, with the approval of the selectmen so elected, may borrow such sums as may be authorized by the town meeting in order to meet necessary expenses which may arise during the period between the vote to become the town of Weirs Beach and the actual incorporation of the town on January 1, 1994. The treasurer may issue notes for such sums in anticipation of taxes in accordance with the provisions of the municipal finance act.

12 Local Vote. This act shall not take effect unless, between May 1, 1993, and May 30, 1993, the inhabitants of that portion of the city of Laconia which would become the town of Weirs Beach on January 1, 1994, shall vote by two-thirds majority in favor of the establishment of the town of Weirs Beach. Within 90 days after the effective date of this section, the secretary of state shall update the checklist, post a warrant and order a special town meeting for the Weirs Beach inhabitants on the question of whether or not to separate from Laconia. The question shall be acted upon in open meeting in the same manner as a secret "yes-no" ballot under RSA 40:4-a. If the vote is in favor of separation, then, at the same meeting, the town moderator and other elected town and school district officials shall be elected. Within 60 days after such meeting the selectmen shall call a special town meeting for the purpose of handling budget matters which arise during the interim period. All subsequent town and school district meetings shall be held in accordance with the laws of New Hampshire.

Amend paragraph II of section 14 of the bill by replacing it with the following:

II. The remainder of this act shall take effect January 1, 1994, as provided in section 12 of this act.

### AMENDED ANALYSIS

This bill allows the Weirs Beach area of Laconia to secede from Laconia and become an independent town.

The bill also requires a two-thirds vote of the inhabitants of the Weirs Beach area in favor of secession before the new town shall be incorporated. The vote must be taken between May 1, 1993, and May 30, 1993, with the town of Weirs Beach being incorporated on January 1, 1994.

SENATOR DUPONT: The parliamentary procedure will be that we will take the minority report first because it is a motion of higher precedence and then we will go to speakers on the minority report of ought to pass with amendment.

SENATOR PODLES: Mr. President and Senators, I rise in support of ought to pass with amendment, and I wish to speak on HB 762. All of us in the Senate have been inundated with reports, also with letters, telephone calls and personal conversations with individuals from Laconia and Weirs Beach. As a member of the Public Affairs committee, I listened to four hours of testimony on this bill on Friday. It is clear to me that the communities of Weirs and Laconia will in all likelihood be unable to recommitting their differences. During the hearing, the officials of Laconia came before us with graphs, charts, and two large volumes of documentation, stating what they believe to be reasonable evidence that they have provided the Weirs community with appropriate services. On the other hand, we also heard from the residents of Weirs Beach. In their testimony and written information we were told that the information presented to us by the Laconia officials was misleading, and in some instances, untrue. They have produced documentation which indicates that there have been years of neglect and abuse in their community as well as documentation that indicates attempts to work with Laconia officials have failed. The amendment which is before you today, will delay the vote of the residents of the Weirs Beach by one year, and will require a two-thirds majority to pass. Those of you who deal with local town issues ranging from school board matters to zoning, know that a two-thirds majority vote is not easy to get. I believe that this is a reasonable and a fair compromise to both parties. It is fair to the city of Laconia, because it gives them the time that they are asking for to work with the residents of Weirs, and if they are sincere and true to their word, about working with Weirs, it could be entirely conceivable that one-third of the citizens in the Weirs Beach will vote not to succeed, and the community of Weirs Beach will remain part of Laconia. The amendment is also fair to the residents of Weirs Beach, because it still gives them the opportunity to decide their own future. My hope is that you will give them a chance to work out their differences and vote to pass the bill with amendment. We are sent here by our constituents to find solutions to our state problems. I submit to you, this amendment is the solution to the problem. I urge your support for ought to pass with amendment.

SENATOR W. KING: I rise against the motion on the floor and for the majority committee report of inexpedient to legislate. Let me just take a couple of minutes to talk about this bill. First, I want to say to everybody on this floor, and everybody in the gallery today,

that there are no good guys and no bad guys in this battle. Everyone who was involved, all of the citizens who were involved in this are great Americans and great citizens of the state of New Hampshire. They have differences of opinion, but they are not good guys and bad guys, they are participating in the political process. While we may disagree over the final outcome of this, we must recognize and applaud the fact that they have been involved in this. There is a bad guy in this picture though, I believe. I believe that that is the state of New Hampshire. Let me talk first about the precedence that, I believe, and that the other members of the majority on the committee believe that this would set. If today, we were to allow this bill to pass, we would be, I believe, opening up the floodgates to other similar communities within towns and cities all over the state of New Hampshire. Communities who, whether legitimately or not, feel that they are disenfranchised, feel that their property taxes are too high. If this bill were to pass we would see Eidelweiss Village, we would see Waterville Estates, we would see Alton Bay, we would see Hampton Beach, we would see Dover Point, we would see areas from all over the state of New Hampshire coming here for the same reason, because they felt that their property taxes were too high, and they weren't getting services that were equal to the amount of property taxes that were being paid. Communities where the wealthier sections of town felt that it was to their financial advantage to abandon the rest of the citizens in those towns. This bill, as Senator Podles said, we are here to deal with the problems of the state of New Hampshire. This bill is a symptom of the fact that we have neglected dealing with a serious problem in the state of New Hampshire. That is an antiquated tax structure that pits good decent citizens against one another all over the state of New Hampshire. I had the opportunity this year to go to the swearing in of the new Laconia City Council, and I had the chance to listen to the new Mayor of Laconia speak to Laconians as he was inducted into the City Council, and as he became Mayor. I want to tell you that I was very impressed that day with Paul Fitzgerald, and with this new City Council. Paul Fitzgerald stood before the people of Laconia and he said, "I don't care where you come from in the city of Laconia, whether you are from the northern part of Laconia or whether you are from the Weirs, whether you are from the central part of Laconia, we are all Laconians and we must work together to solve the problems that we have." We have all watched Laconia at war with itself in the past few years. This is only one more skirmish in that war. Whether you agree with me, that much of the cause of this is the tax structure in the state of New Hampshire, that pits citizens against one another, or whether you believe that the tax structure is just fine, you have reason to vote against the motion on the floor. If

you agree with me, then you would vote this way, because we must help Laconia heal itself. If you disagree with me, that the tax structure, and I look at Senator Humphrey and others as I say that, if you disagree with me, that the tax structure plays a role in this, then you must vote against this. Because to vote for it would be to continue the slow bloodletting that is occurring within our communities and that is sure to grow even faster with communities coming to us for the same thing all over the state of New Hampshire. Please vote against the recommendation on the floor, against the motion on the floor, and for the committee report of inexpedient to legislate.

SENATOR FRASER: I stand here before you today on a matter that is so important to the city of Laconia, to the Weirs Beach area, and to me personally, as the Senator from the affected district. I have been involved with this issue for close to two years now, and I have had innumerable discussions with leaders of the Secession Movement, City Officials, members of the House of Representatives and other interested parties. My conclusion is, that secession is not warranted. In early 1991, I held two meetings in an attempt to mediate this situation, which I first became acquainted with during my campaign. During both of those meetings I was struck by the fact that although the Weirs area might have some problems, those problems were not unique to the Weirs, and were in fact, faced by many neighborhoods in many municipalities. It is my belief, that secession is the most drastic of solutions and should be used only when two factors exist simultaneously. The first, is when you have irreconcilable problems, and I am convinced that this is not the case. In fact, within the past few days, leaders of the Secession Movement have finally agreed to sit down and participate in the Mayor's Commission to review this situation, and I think that that is a positive first step. The second factor that should exist when a secession is about to be blessed by the state, is that the state should be working well within defined and time tested guidelines. New Hampshire at this time has no such guidelines. As Senators representing not only individual areas, but with a concern for the entire state, we must also judge the precedential value that this bill has. The passage of this bill will send a signal to any unhappy neighborhood that they can marshal a set of grievances, lobby hard in Concord, and obtain a favorable vote locally that they will be allowed to secede. This should not be the case. Finally, Mr. President and my colleagues in the Senate, I would like to address my colleague, Senator Podles' amendment. To allow the secession debate to continue for another year, will simply cause both parties to launch into a yearlong political campaign making local resolution nearly impossible. Additionally, the so-called "compromise" still ignores the right of the other citizens of Laconia to participate

in the process. I, like Senator King, am convinced that Mayor Fitzgerald and the members of the new council are peacemakers. They have made great strides in returning civility and reason to the public debate and budgetary considerations in that city. I feel that they can do the same on this issue providing that they do not have the club of secession hanging over them. My colleagues, I would urge you to vote no on the proposed amendment that is on the floor, and then also vote no on the bill itself.

SENATOR PRESSLY: I rise to render a compliment to all of the people who contacted us. I know that you probably all have had the same experience. But I think that it should be noted in the record that the people who have contacted me on this issue have always been extremely courteous. I know that it has been a very emotional issue for them and they have shared a lot of really, gut feelings with me. But at all times, they have used grace and courtesy that I want to express appreciation for. Whatever the outcome is, I am sure that their issue will continue, and I would like it to be recorded that as a group, they have demonstrated as much charm and courtesy as any, both sides.

A roll call was requested by Senator Podles.

Recess.

Out of recess.

Senator Podles withdrew her motion for a roll call.

Committee amendment fails.

Question is on the ought to pass motion.

Ought to pass motion failed.

SENATOR BASS: Mr. President, as Chairman of the Public Affairs committee, I move inexpedient to legislate. Obviously, I have prepared comments relating to this issue, having spent four to five hours on Friday, along with other committee members, listening to a very complete analysis of the situation from both sides. I think that the issue boiled down to one basic question; and that is, has the city of Laconia created a situation in the Weirs area that resulted in years of abuse and neglect? I think that when you read the record, when you have read, as I have done, the thousands of pages of research work that has been done by these individuals who are trying to save their city, you will see that the answer is no. The answer is that certainly there have been problems in the Weirs area, but they are not problems that have been significant enough to rise to the level of secession. I am also surprised to see a town proposing to take 28 percent of the land area, with 10 percent of the population.

I'd also point out that we have another bill coming up this morning, HB 1240 which we will be dealing with in about three minutes, which will be establishing a study committee to develop fair and equitable mechanisms for portions of towns which wish to secede. I urge the Senate to adopt the committee recommendation of inexpedient to legislate.

Senator Bass moved the majority report of inexpedient to legislate.

Motion is adopted.

HB 762, is inexpedient to legislate.

SENATOR HEATH (Rule #44): However any of you felt on this issue, something happened at that hearing that, I think, that you should all condemn. We don't have, perhaps a way of censoring witnesses who do this kind of thing, but I think that some mention has to be made of this, because it should be offensive to all of us. I have only seen it happen twice, I think, in the years that I have been in this process and this was, I think, outrageous enough. I have here the end of the testimony of Robert Babineau, the Chief of Police in Laconia. A previous officer who had worked in Laconia and had risen through the ranks of Lieutenant, testified on that piece of legislation. When the Chief of Police of Laconia spoke countering that testimony, he ended his testimony in this way, "number two, the policy on public comments that the Laconia Police Department has pertaining to internal affairs investigations and disciplinary action, does not enable me to provide this committee with the information that would allow you to properly put his comments into perspective." This is a way to impugn a witness, without the witness being able to be faced with the information and making the reference that you can use your imagination. I think that that is an unfair, slanderous, devious way to counter a witnesses testimony. I would hope that you would all share my sense of offense whichever side uses that, on whichever issue. I would hope that you would share that offense of process that I sense from having witnessed it. Thank you.

SENATOR BASS (Rule #44): Mr. President, as Chairman of Public Affairs, I want to assure this body that Mr. Collins was the person who was the subject of Senator Heath's speech. If he had so desired, would have been given ample opportunity by me to speak a second time and to rebutt any charges that may or may not have been made. I just want the Senate to know that he did not choose to do that.

Senator Heath recorded in unanimous consent.

Recess.

Out of recess.

**HB 1209**, an act establishing a committee to study the real estate valuation and revaluation process. Public Affairs committee. Ought to Pass with Amendment. Senator Podles for the committee.

**5487L**

**Amendment to HB 1209**

Amend paragraph IV of section 2 of the bill by replacing it with the following:

IV. Two assessors, one from a town and one from a city, appointed by the New Hampshire Municipal Association.

SENATOR PODLES: HB 1209 establishes a committee to do an in-depth study and review of the real estate assessment and reevaluation process. The committee recommends ought to pass.

Adopted.

Ordered to third reading.

**HB 1240**, an act establishing a committee to study criteria and propose legislation concerning the secession of a portion of a municipality. Public Affairs committee. Ought to Pass with Amendment. Senator Bass for the committee.

**5488L**

**Amendment to HB 1240**

Amend paragraphs II and III of section 1 of the bill by replacing them with the following:

II. Three senators, appointed by the senate president.

III. One representative of the New Hampshire Municipal Association, appointed by such association.

SENATOR BASS: Mr. President, this is the bill that I mentioned a minute ago when we were dealing with HB 762. It establishes a committee to study criteria and a uniform mechanism, whereby portions of towns may become separated from the rest of the town. The amendment simply adds one more Senator. So there will be three Representatives and three Senators. The committee urges your adoption of ought to pass as amended.

Adopted.

Ordered to third reading.

**HB 1485-FN-A**, an act relative to children and family services, requiring the division for children and youth services to use reasonable efforts to preserve families while providing services designed to protect children. Public Institutions, Health and Human Services. Inexpedient to Legislate. Senator J. King for the committee.

Recess.

Senator Currier in the Chair.

SENATOR J. KING: The committee voted inexpedient to legislate. Let me give a little history on the bill. It came about last year, it was known as the CHINS bill. It was sent to a study committee by the Health and Human Services committee. During the summer we studied it and came out with a pilot study for the town of Merrimack or the county of Merrimack to set up a CHINS program. As time progressed and it started going through the House, three bills were merged into one. As far as the calls, I would say the calls were about one hundred to one, at least, against the bill. Not just with me, but with everyone on the committee, and with all the Senators in this room today. We had a hearing that we had to move to the House of Representatives Hall so that it could be handled. At that time, several of the sponsors of the bill said that they did not agree with the bill, because it was not the bill that they started out with, and then they withdrew as sponsors. There are some others here that are going to speak on it, so I will just ask that you go along with the committee report of inexpedient to legislate. Thank you.

SENATOR MCLANE: Mr. President and Senators, Senator King suggested that I take a rule #44 on this, but I decided that I wouldn't. I decided that I would take my #45 and get it out. I was very upset and very angry about this bill, and I would just like to get a few things off my chest. I think that my problem was that I just had gone to the doctors about my hip, and then they had to move the hearing over here to Representatives Hall to accommodate everyone that showed up. There were 500 people in Representatives Hall, including about 50 children, that acted to me, like they were children at a Calvinistic church meeting in 1640. They never moved for the whole 4-1/2 hours that we sat. I finally got so upset that one of the people speaking, turned around and rather inappropriately said to me, "what is your name?", and I said, "I am Senator Podles." So I think that shows you where I was. Otto, matter-of-fact, I don't think that Senator Heath knows that Otto is really going to takeover his reputation as the sketcher. Otto did a wonderful picture at about 5 o'clock. It was a picture of Otto sitting there listening, and underneath it said, "I am against abuse of the elderly," and here was Otto sitting here. It was not a pleasant hearing. I think that I have usually been a good sport about the bills that I have won and the bills that I have lost, the billboards, the skis, the gambling. I was even good about the Karner Blue Butterfly, and I didn't gloat when I won that one. I usually believe the experts. I told Senator Fraser that I would vote with him on the Weirs. I always listen to Senator Cohen and Senator Shaheen on Pease, I listen to Senator Bass on retirement, and I listen to Senator Dupont on economic development. So I



would ask that you would spend one minute with me, listening about DCYS, the Division of Children and Youth Services, and the bill that is before you. I wrote the original DCYS bill, and I think that I do know what I speak of. But what bothered me so much about this hearing, were the attacks on people that we have worked with for many years in the fields of child abuse and in the field of help to children. Child and Family Services, which recently gave a wonderful conference, over 450 people came, they had to turn people away. Family Strength, run by Ellie Stein-Cowen who was the President of the Senate's appointee on the committee that wrote this bill. The Children's Alliance, run by Terry Lockhead. Let me tell you the sort of attacks that they made. The Children's Alliance puts out a bumper sticker, "It shouldn't hurt to be a child." They turned that around and said that it really should hurt to be a child, if you are going to discipline them satisfactorily. Then they turned it around and said that, "It shouldn't hurt to be a parent." This was the sort of thing that we were dealing with on Monday afternoon. If you get right down to it, they want to eliminate DCYS, they want to eliminate the Department of Education, there were many home schoolers there who boasted that they don't follow the state law. They don't believe in any government at all. This bill was an effort by good people, Senator Dupont, Mary Jane Wallner, Representative Nordgren, myself, Senator Podles, to try and put a definition of what they called reasonable effort into legislation. Reasonable effort was defined in the legislation as making DCYS act, the Child Placing Agency act, with diligence and due care in the performance of its duties. To prevent further abuse and neglect of children, to prevent the removal of a child from their home. What this group did not understand, was that in opposing this bill, because they didn't understand the parliamentary situation, they were going back to the original law. This bill, from their point of view, would have been better than the original law. But finally, when you pushed them, it came out that what they really wanted, was to get rid of the original law altogether. The part of the bill that we sponsors didn't like, and we were upset that our names were still on the amended version, was the part about the CHINS, put in by Bill McCain. I join Senator Colantuono and others in opposition to that section of the bill. So for that reason, we are having no opposition today to the bill. But I want to warn you about something that is happening. That is that the 500 people that turned out at this hearing, because, I believe, that we are going to be hearing from them again and again. I would like to point out some things about them. Senator Dupont spoke and said, "that we must face up to what is happening in DCYS." We all know that they need a new director and we hope that they are going to get one very soon. There caseload has gone from 2,000 to 5,000 and their

caseworkers have only gone up from 132 to 134, they need training. Many of us have heard the example of Strafford County and the excellent job that they are doing with child abuse and delinquency. We are trying to move forward, but in the meantime, this group of people that claim that they care about children are with us. I would like to read from two documents, because I warn you, in your districts, you are going to hear more. Representative Sharon Nordgren has just passed over to me, a document that is being passed out in her district, and you are all going to see it. It says, "Does your local Representative represent you?" Then they obviously have fit in her name, because she supported the Children's Bill of Rights and she supported the original 1485. They go on to give these examples, "If you have trouble with your 13 year old daughter, and you tell her that she cannot stay out all hours of the night with her boyfriend, the police are going to come to your door and take your child away, and you are going to have no recourse in the courts." This is the sort of thing that they are saying. They finally end up saying, "What will they think of next, probably assigning a worker to every family in the state, farfetched you say? No. The plan is already called. The New Hampshire Plan for Prevention of Child Abuse", of which, Senator Podles has been a leader over the years. This is from the Alliance for Family Rights. There is also a long handout from Americans for Traditional Values. This is what turned out the 500 people, let me read from it: "Enactment of this bill would enforce complete socialism in my family life. This bill will not only bankrupt the family, but the state, too." Then they list all of the names and your telephone numbers, and you may wonder why you got all of these calls. They go on to say "that if one of your children misses one day of school or talks three times in class after being told not to by the teacher, CHINS can take your child away from you. Your child will be removed from your home until you can prove that there is no risk or harm." Now harm, according to them, is defined by parents who use any physical punishment, according to the standards of that awful body, The American Academy of Pediatrics. They go on to say, "You must prove that your home is safe, which means that you can have no firearms in your home or your child will be taken from you." They then go on to the worse thing that could happen to you, "your child and you will be evaluated by a Family Interdisciplinary Team, headed by a pediatrician who has been selected and trained according to the The American Academy Of Pediatrics." It would be funny if it hadn't affected all of us. So we sat through that hearing on Monday for 4-1/2 hours and you all may be next. So I would like to warn you and I would like to say that in killing this bill, HB 1485, I don't want to be aligned with that side that has passed out this sort of information, and I would like to warn you all of such. Thank you.

SENATOR W. KING: I had intended to offer an amendment which struck the entire bill and substituted a little bit of language to deal with the situation that many of you probably read about up in Monroe. Many of you probably read about it in the Boston Globe this weekend, that happened up in the town of Monroe, which is in my district. I am not going to do that, but I am going to seek a vehicle for that elsewhere, for the simple reason that I am going to defer to my cousin from the South, Senator John King, who suggested that maybe it would be best not to leave this bill alive anywhere where it could be amended any further, in a committee of conference or anyplace else. However, I would like to take exception with some of what Senator McLane has said. I do so somewhat reservedly, and the reason for that is, that anytime that you speak out against things that are done by the Division of Children and Youth, sometimes, you are tarred as being anti-child. Somebody has got to stand up and say, 'enough is enough. That there are those of us who believe that you should protect children and protect the civil liberties of those parents who are accused of abuse.' There has to be a balance there. Those 500 people, I don't know who they were, but I think that it does a disservice to the task of this Senate, and to the task of all of us who are in the public light, trying to find a reasonable balance between the civil liberties of those families and between the rights of those children, it does a disservice for us to blindly follow either side of this argument. That for us to tar all 500 of those people, some of whom I know, and have nothing to do with calvinist revival meetings or anything else, with the same brush, is as bad as for them to tar those of us who stand up for childrens rights, such as Senator McLane, with the same brush. We have a serious problem at the Division of Children and Youth. Much of it as Senator McLane has said, is because people are improperly trained. But the net result of that, when you couple it with the fact that the rules of evidence are not required for many of the proceedings that occur when you deal with abuse charges, when you couple those things together, you have the potential for a tremendous amount of abuse. We have to be careful. I have heard in the last three years since I have been watching this, some stories that would curl the hair on your neck, even Senator Humphrey, who sometimes says that he has none to curl. It is our responsibility as public policymakers, not to kowtow to either side on this particular issue, but to take a careful look at how we balance those interests. I would urge you to do that. To not blindly accept one side or the others' argument on these issues. Because if we do that, and we continue to get nowhere, as we have over the past few years, we will continue to see the kinds of things happen that happened up in Monroe, where one five year old child was questioned for three hours by the state police and DCYS workers. There

are other instances. Let me tell you, finally, about one last instance, because it does pertain to one of the people that Senator McLane was alluding to. I received a call from a constituent of mine a few weeks ago, and he said to me, "Wayne, I never vote for you, and I want you to know it, and you do know it anyway, because we don't agree on anything. You know that I belong to a certain church and I have been accused of abusing my child." And his side of the story was, "that he had a 15 year old, who was out of control and he was seeking help, yet he was being responsible for all of the problems of that child." I don't know whether this person was guilty or not guilty and it is irrelevant to the conversation. But he said, "let me just tell you one thing. When we were in court the other day, I looked across the table at the workers' papers and saw written in bold magic marker, at the top of the papers, fundamentalist Christian." He said, "I know that you don't agree with my philosophy about my religion, but what if that said black man at the top of it, or what if it said Jewish man? How would you react?" There are some problems that we have to deal with here, folks. No matter where you come down on it, all I ask is that you come down with an open mind so that we can begin to address that.

SENATOR PRESSLY: I rise to speak on this issue for a couple of reasons. I, too, was at the hearing. I was there when the crowd moved from the one building to another, and I was there when the honorable Senator McLane called herself Senator Podles. It was quite a day. There was no doubt about the emotion, the electricity, and the position, and the feeling that these people had. At the same time, their concern, I felt, was truly genuine. I believe that everyone in this chamber can refer to an article that they have read at some time in the last few years, where they have heard a horror story of both extremes. One where a child has actually been killed in their own family setting and on the other hand, where a family has been totally wrought asunder, because of an accusation of abuse that turned out to be unfounded. In many types of movements within our society or changes, we seem to have a pendulum. My feeling is that the pendulum has swung very far now in one direction. It hasn't been too many years that we denied the fact that there was such a thing as child abuse. Those were things that we kept hidden, that people did not talk about. We have worked as a society, very hard to address abuse and neglect of children and to see to it that our children are protected. However, there appears to be now a backlash maybe from an extreme. I will not be supporting this bill, because of the chaos surrounding it at this point. But I want to be recorded and, I think, that it is important that all of us realize that this is an issue that does merit our concern. I think that there are some changes in

definitions and in clarity. I feel both the CHINS component and the abuse and neglect component need to be clarified for everyone's sake. I think that the thing that concerns me the most is throughout this whole debate and this argument, the category of person who really gets left out of the whole situation is in fact, the child. I would like to see all of us in the Senate, the House, in the state of New Hampshire, to consider this, and the heavy debate surrounding this issue as a time to be challenged. Challenged to new solutions to this situation. I have heard some things that are sort of exciting. I have heard about, in fact it was Senator McLane who was discussing one new approach where a family that was having trouble, would have a professional come into the home and work with them in the family setting, at the effort of pointing out some things that maybe they could do differently to enhance the quality of their lives. The other type of program that I have heard about that really seems quite wonderful, we have two extremes, just within how we help these children. We have foster care, which is not very well funded, the parents are not trained very much, are not paid on time. Then at the other extreme, you have this expensive institutionalization. Surely there has to be something important right in between. Some of the things that I have heard about, that I think deserve merit and, hopefully, will be brought up at some time in the future, would be what they call a new type of foster care or foster family. Where we have an opportunity as a society and individually, to explore some of these new ideas that could be done. We need to provide better services for the children and for the families. Some of the ideas that I hope to explore, and I hope that you will too, the concept of a new type of foster care or family, where people can actually be trained, it can be a new career, where parenting is raised to a level of importance, where it is paid appropriately and it is appreciated appropriately. It would be far more cost-effective, and I think under any circumstance, I would much prefer to see a child, if they are removed from their family, for whatever reason, that they be placed with another family. I think that we have our work cut out for us. As I said, I will not be supporting this bill, but I will be supporting looking for new ideas and some changes that need to be made in the total system to make it better. Thank you.

SENATOR MCLANE: I am sorry, Mr. President, I don't mean to prolong this, but I cannot let those good ideas go unthought out. I would say, would you be surprised to know that the thrust of the bill that we are talking about, the original bill, and the thrust of what we are talking about, is exactly as you said, but that these people, and I will give you a copy of the document that they have passed out, are not in favor at all of what you are talking about. That to me is the

problem, is that they insist that any government interference, such as that terrible idea of sending a social worker into the home, rather than remove the child. That is the sort of thing that they are talking about. That is what distresses me. Would you believe?

SENATOR PRESSLY: I do believe that the group that was at the hearing are certainly afraid. I do believe that their attitudes may have appeared extreme; however, I do believe their ideas are worth listening to and addressing. I am hoping to find some solutions.

SENATOR HEATH: Thank you. Senator McLane was just a moment ago talking about sending welfare workers into the homes and why would anybody oppose that? Well, we have in our constitution a provision not to send the military, to quarter it, in your homes. We have very strict eminent domain procedures, because the taking of property is such a horrendous invasive act of government. We have an agency that, never mind your property, we will take your family, sometimes on very little cause. I have waited for this moment, and I am glad that it happened before I left this body. That the alarm of an agency runamuck has gone out and they brought it on themselves. They tried to overreach one more time and they finally ran into a wall of indignation that they justly deserve. From the earliest days when I got interested in the legislative procedure, I heard horror stories, and when I encountered them, particularly once I got into the Senate, I couldn't honestly believe them at first, I couldn't believe that these things really happen. I thought these people are emotionally overwrought, that they are exaggerating. I kept hearing them from all sorts of people, from poor people, from wealthy people, from educated people, from uneducated people, republicans, democrats, baptists and catholics. This agency had done things to my constituents that I am ashamed to be associated with the state, in that respect. I think that this finally provided a forum so that anybody with a modicum of intelligence, could see that something drastically needs to be done. Now I grant that this agency has one of the toughest jobs. Because to protect children from something that might happen, has got to be a difficult task. If you get too lenient and something happens, they beat the living hell out of you in the newspaper. If you go overboard, as this agency, unfortunately, has chosen that end of the spectrum to operate out of, then you get beat up pretty heavily, too. It is a tough job and it needs to be done by professionals and we don't have professionals in that agency. And the horror stories are legion, there are too many not to believe that it is not just a fire, it is a damn raging inferno; and I am glad that this all came about, although I was a little horrified earlier on. I thought that there might be a chance that we would do what the House did, and rubber stamp the agency one more time. But I think

that this is a healthy process to bring some focus and light on an agency that has decided it is above the law and the constitution and common decency, and morality in general. Thank you.

**SENATOR COLANTUONO:** Briefly, I want to echo many of the remarks that I just heard. There is something that I have been thinking that would be appropriate in this area, because I have seen and heard about the horror stories in my practice as an attorney dealing with this agency and now in my service in the state Senate, hearing from constituents and non constituents alike, about all the horror stories similar to what Senator King told and Senator Heath referenced and so forth. I have received phone calls from people, I have received letters from people, and a lot of it is hard to believe, but because of my prior experience in the courts, I do believe it. I agree that it is an agency that has run amuck and I have been thinking about calling for a general investigation by one of our standing committees, which we have the power to do under RSA 17-d:3, each permanent standing committee of the House and the Senate is authorized to invite public officials and employees and private individuals to appear before it for the purpose of submitting information to it. The committees are authorized to maintain a continuous review of the work of the agencies concerned with its subject area and the performance and the functions of government within each subject area, etc. So we not only have the power to do this, I think that we have the obligation to do it, considering the many numerous and repeated horror stories that we have been hearing. I would call on the standing committees that deal with the agency, DCYS. Whether it be the Judiciary committee or Public Health and Human Services committee to convene an investigatory situation, to take public testimony, to bring the commission in and to determine exactly, get to the bottom of what is wrong over there and try to fix it next session. As a member of the Judiciary committee, I would be willing to spend some time this summer, doing that.

Committee report of inexpedient to legislate is adopted.

**HB 1499-FN**, an act relative to inter-track wagering and the conduct of simulcast racing. Ways and Means committee. Ought to Pass. Senator Blaisdell for the committee.

**SENATOR BLAISDELL:** Mr. President and members of the Senate, in years of past, if you brought in a simulcast bill, the flags went up in the air and all hell broke loose. But this bill came over from the House with the unanimous report on the consent calendar, and was reported to Senate Ways and Means. Senator Humphrey and I debated at great length whether or not we would bring Representative Benton with his 1-1/2 hour presentation to show you in the Senate,

how we could save \$135 each day. But in Gordon's good wisdom, he said that he thought that we could do this without his assistance. This bill is in the best interest of racing in the state of New Hampshire. What this Senate has done over the past few years as far as simulcast racing, has really enhanced the revenue picture as far as racing and it really has saved the tracks. Senate Ways and Means wants this bill to pass in the Senate. We ask for your support and I hope that you support it.

SENATOR DISNARD: I rise in strong support of HB 1499. One of my main reasons is, for the first time in eight years in this legislature, I have seen a cooperative effort between members of the legislature and the towns where all four of the tracks are located and the Pari Mutuel Commission, which regulates this industry, as well as the racing industry itself. I also enjoy the bill, and I will vote for it and I hope that you will too, because these four tracks are probably the largest property tax producers in their community. It brings and has brought, not tens of millions, not 100's of millions, but a few hundreds of millions of dollars in taxes since they have been operating. While one may disagree with this type of method of obtaining dollars, it is a fact of life, it is part of the livelihood of many people, it is part of their income and I hope that you support it.

Adopted.

Ordered to third reading.

Recess.

Out of recess.

**HB 1025-A**, an act relative to budget adjustments for fiscal years 1992 and 1993. Finance committee. Ought to Pass with Amendment. Senator Blaisdell for the committee.

**5507L**

### **Amendment to HB 1025-A**

Amend the bill by replacing all after the enacting clause with the following:

1 Supplemental Appropriations. In addition to any other sums for the fiscal years ending June 30, 1992, and June 30, 1993, the following appropriations are hereby authorized to the following departments and agencies. Said appropriations shall be a charge against the funds as specified in the individual appropriation:



	FY 92	FY 93
02 Admin of justice & public prtn		
01 Judicial branch		
04 District and municipal courts		
10 Personal services - permanent		27,624
11 Judges		36,000
20 Current expenses		5,200
30 Equipment		12,512
91 Jury expense		<u>101,218</u>
Total		182,554
Estimated source of funds for District and municipal courts		
General fund		182,554
Total		182,554
02 Admin of justice & public prtn		
01 Judicial branch		
06 Court security		
10 Personal services - permanent		19,446
Total		19,446
Estimated source of funds for Court security		
General fund		<u>19,446</u>
Total		19,446
Total		202,000
Estimated source of funds for Judicial branch		
General fund		202,000
Total		202,000
02 Admin of justice & public prtn		
07 Office of emergency management		
01 Emergency mgt assistance		
04 Hurricane Bob - FEMA 0917		
90 Public Assistance	G	<u>297,076</u>
Total		297,076

Estimated source of funds for		
Hurricane Bob - FEMA 0917		
General fund	297,076	
Total	297,076	
02 Admin of justice & public prtn		
07 Office of emergency management		
01 Emergency mgt assistance		
05 Coastal storm - FEMA 0923		
90 Public assistance	G 144,621	
91 Individual assistance	G 80,625	
Total	225,246	
Estimated source of funds for		
Coastal storm - FEMA 0923		
General fund	225,246	
Total	225,246	
Total	522,322	
Estimated source of funds for		
Office of emergency management		
General fund	522,322	
Total	522,322	
02 Admin of justice & public prtn		
16 Department of corrections		
03 Division of adult services		
02 Bureau of security		
01 Security		
18 Overtime	93,366	150,000
60 Benefits	9,903	15,000
92 Inmate wages	30,000	100,000
Total	133,269	265,000
Estimated source of funds for		
Security		
General fund	133,269	265,000
Total	133,269	265,000
02 Admin of justice & public prtn		
16 Department of corrections		
03 Division of adult services		
06 Bureau of health services		
03 Meducal dental		
45 Personal services/Non benefit	0	405,000
93 Outside medical services	1,092,857	838,000
Total	1,092,857	1,243,000

Estimated source of funds for		
Medical dental		
General fund	1,092,857	1,243,000
Total	1,092,857	1,243,000
02 Admin of justice & public prtn		
16 Department of corrections		
03 Division of adult services		
09 Pharmacy		
10 Personal services - permanent *		99,813
50 Personal services - temporary		14,625
60 Benefits		32,042
* The following positions are established effective July 1, 1992: 1 administrator II, 1 pharmacist I, 2 pharmacy clerks.		
Total		<u>146,480</u>
Estimated source of funds for		
Pharmacy		
General fund		146,480
Total		<u>146,480</u>
02 Admin of justice & public prtn		
16 Department of corrections		
05 Division of med-forensic svcs		
01 Secure psychiatric unit		
45 Personal services/non benefit		21,000
46 Consultants		59,000
93 Outside medical services		<u>33,000</u>
Total		<u>113,000</u>
Estimated source of funds for		
Secure psychiatric unit		
General fund		113,000
Total		<u>113,000</u>
02 Admin of justice & public prtn		
16 Department of corrections		
06 NH State prison for women		
01 Prison for women		
93 Outside medical services		<u>197,000</u>
Total		<u>197,000</u>
Estimated source of funds for		
Prison for women		
General fund		197,000
Total		<u>197,000</u>

Total	1,226,126	1,964,480
Estimated source of funds for Department of corrections		
General fund	1,226,126	1,964,480
Total	1,226,126	1,964,480
Total	1,748,448	2,166,480
Estimated source of funds for Category 02		
General fund	1,748,448	2,166,480
Total	1,748,448	2,166,480
05 Health and social services		
01 Dept of health and human svcs		
02 Div of public health services		
04 Family and community health		
01 Maternal and child health		
94 Child dental health program *		120,000
* This funding is to restore preventive child health dental hygiene services to areas where such services are lacking. Services shall be targeted to children ages 3 to 6 years from low income families enrolled in well - child clinics. Preventive services include examination, cleaning, topical fluoride application, two bite wing x-rays, home care instruction, and referral for treatment but not the treatment itself. Compliance with the dental practices act will be the responsibility of each local clinic provided a portion of these funds.		
Total		120,000
Estimated source of funds for Maternal and child health		
General fund		120,000
Total		120,000
Total		120,000
Estimated source of funds for Div of public health services		
General fund		120,000
Total		120,000
05 Health and social services		
01 Dept of health and human svcs		
03 Div for children & youth svcs		
02 Bureau of children		

04 C&Y Title IVE grants		
41 Audit fund set aside	488	843
90 Foster care	<u>977,700</u>	<u>1,686,666</u>
Total	978,188	1,687,509
Estimated source of funds for C&Y Title IVE grants		
00 Federal funds	489,338	844,176
05 County funds	122,213	210,833
General fund	366,637	632,500
Total	978,188	1,687,509
05 Health and social services		
01 Dept of health and human svcs		
03 Div for children & youth svcs		
02 Bureau of children		
07 DCYS - Settlement		
90 DCYS Settlement	<u>1,141,209</u>	<u>4,490,000</u>
Total	1,141,209	4,490,000
Estimated source of funds for DCYS - Settlement		
05 County funds	285,302	1,122,500
General fund	855,907	3,367,500
Total	1,141,209	4,490,000
Total	2,119,397	6,177,509
Estimated source of funds for Div of children and youth services		
Federal funds	489,338	844,176
General fund	1,222,544	4,000,000
Other funds	407,515	1,333,333
Total	2,119,397	6,177,509
05 Health and social services		
01 Dept of health and human svcs		
04 Division of human services		
01 Directors office		
01 Administration		
41 Audit fund set aside	56	103
20 Current expense	<u>111,111</u>	<u>200,000</u>
Total	111,167	200,103
Estimated source of funds for Administration		
00 Federal funds	57,633	103,743
General fund	53,534	96,360
Total	111,167	200,103

## 05 Health and social services

## 01 Dept of health and human svcs

## 04 Division of human services

## 04 Financial grants

## 01 Aid to families w/ dependents

## 41 Audit fund set aside

2,205

6,169

## 90 AFDC

4,409,83812,338,036

## Total

4,412,043

12,344,205

## Estimated source of funds for

## Aid to families w/ dependents

## 00 Federal funds

2,207,124

6,175,187

## 09 Agency income

141,081

185,124

## General fund

2,063,838

5,983,894

## Total

4,412,043

12,344,205

## 05 Health and social services

## 01 Dept of health and human svcs

## 04 Division of human services

## 04 Financial grants

## 05 Medical grants

## 41 Audit fund set aside

8,775

19,183

## 90 Provider payments

17,549,46638,366,685

## Total

17,558,241

38,385,868

## Estimated source of funds for

## Medical grants

## 00 Federal funds

8,783,508

19,202,526

## General fund

8,774,733

19,183,342

## Total

17,558,241

38,385,868

## 05 Health and social services

## 01 Dept of health and human svcs

## 04 Division of human services

## 04 Financial grants

## 06 Nursing services

## 41 Audit fund set aside

4,863

6,990

## 90 Nursing services

7,593,321

9,904,987

## 91 Home nursing services

2,132,6774,075,248

## Total

9,730,861

13,987,225

## Estimated source of funds for

## Nursing services

## 00 Federal funds

4,867,862

6,997,108

## 05 County funds

1,908,411

3,045,784

## General fund

2,954,588

3,944,334

## Total

9,730,861

13,987,225

## 05 Health and social services

## 01 Dept of health and human svcs

04 Division of human services		
04 Financial grants		
07 Other nursing homes		
41 Audit fund set aside	498	215
90 Other nursing homes	<u>996,734</u>	<u>430,000</u>
Total	997,232	430,215
Estimated source of funds for		
Other nursing homes		
00 Federal funds	498,865	215,215
General fund	498,367	215,000
Total	997,232	430,215
Total	32,809,544	65,347,616
Estimated source of funds for		
Div of human services		
Federal funds	16,414,992	32,693,778
General fund	14,345,060	29,422,930
Other funds	2,049,492	3,230,908
Total	32,809,544	65,347,616
Total	34,928,941	71,645,125
Estimated source of funds for		
Dept of health and human svcs		
Federal funds	16,904,330	33,537,954
General fund	15,567,604	33,542,930
Other funds	<u>2,457,007</u>	<u>4,564,241</u>
Total	34,928,941	71,645,125
Total	34,928,941	71,645,125
Estimated source of funds for		
Category 05		
Federal funds	16,904,330	33,537,954
General fund	15,567,604	33,542,930
Other funds	2,457,007	4,564,241
Total	34,928,941	71,645,125
Total appropriations as included in	36,677,389	73,811,605
Category 02 and category 05		
Estimated source of funds for		
Category 02 and category 05		
Federal funds	16,904,330	33,537,954
General fund	17,316,052	35,709,410
Other funds	2,457,007	4,564,241
Total	36,677,389	73,811,605

2 Department of Administrative Services; Indigent Defenders. Amend PAU 01, 04, 01, 02, 04 as inserted by 1991, 312:1 as follows:

		FY 92	FY 93
Strike out:			
90 Assigned counsel	F	<u>2,100,000</u>	<u>500,000</u>
Total		10,200,000	9,950,000
Estimated source of funds for indigent defense			
General fund		<u>10,200,000</u>	<u>9,950,000</u>
Total		10,200,000	9,950,000
Insert in place thereof:			
90 Assigned counsel	F	<u>2,600,000</u>	<u>500,000</u>
Total		10,700,000	9,950,000
Estimated source of funds for indigent defense			
General fund		<u>10,700,000</u>	<u>9,950,000</u>
Total		10,700,000	9,950,000

3 Department of Administrative Services; Surplus Food Distribution. Amend the footnote to PAU 01, 04, 05, 02, 03 by replacing it with the following:

With the approval of the governor and council, the supervisor of the surplus distribution section is authorized to transfer personnel, appropriations or portions thereof, as well as equipment, between subdivisions of the section. Such transfers shall not place an unwarranted demand upon the fund balance of either surplus food or surplus property. Authority is hereby given to utilize so much as may be necessary of the balance accumulated at June 30, or any surplus accumulating during the fiscal year within the surplus distribution section, with the approval of [the fiscal committee and] the governor and council, to efficiently operate this section without the use of any other state funds.

4 Department of Administrative Services; Surplus Property Distribution. Amend the footnote to PAU 01, 04, 05, 02, 04 by replacing it with the following:

With the approval of the governor and council, the supervisor of the surplus distribution section is authorized to transfer personnel, appropriations or portions thereof, as well as equipment, between subdivisions of the section. Such transfers shall not place an unwarranted demand upon the fund balance of either surplus food or surplus property. Authority is hereby given to utilize so much as may be necessary of the balance accumulated at June 30, or any surplus accumulating during the fiscal year within the surplus dis-



tribution section, with the approval of [the fiscal committee and] the governor and council, to efficiently operate this section without the use of any other state funds.

5 Department of Administrative Services; Centralized Mail Distribution. Amend PAU 01, 04, 05, 05, 02 as inserted by 1992, 312:1 as follows:

I. By deleting in class 09, footnote I.

II. By replacing the PAU footnote with the following:

The director of plant and property management is authorized to charge current first class postal rates against departmental or institutional appropriations, and to utilize any cost-savings incurred through efficient operations to fund this PAU up to the limits of the appropriations. General funds will be reduced by any amount of agency income which is greater than that appropriated.

6 Division of Information Services; Positions.

I. The following positions shall be exempt from the provisions of 1991, 355:124:

(a) PAU 01, 04, 01, 03, position number 10117.

(b) PAU 01, 04, 03, 01, position number 10190.

(c) PAU 01, 04, 03, 04, positions numbered 30026 and 10263.

(d) PAU 01, 04, 03, 02, position number 16692.

II. Any funds transferred from PAU's in paragraph I pursuant to 1991, 355:124 in fiscal year 1993 shall be restored to the respective PAU's as the positions are filled on or after July 1, 1992.

7 Division of Information Services; Data Processing Manager II Position Added. A classified position of data processing manager II, labor grade 33, is hereby established in the division of information services, computer services. Funds for this position are appropriated in this act.

8 Division of Information Services; Positions.

I. The following positions funded in fiscal year 1992 and 1993 by PAU 01, 04, 03, 04 are exempt from the provisions of 1991, 355:130, III and the amended fiscal committee plan of October 17, 1991:

(a) PAU 01, 04, 03, 04, positions numbered 10191, 16614, 10231.

II. Any funds transferred from PAUs in paragraph I pursuant to 1991, 355:130, III in fiscal year 1993 shall be restored to the respective PAUs as the positions are filled on or after July 1, 1992.

9 Department of Administrative Services; Financial Data Management. Amend PAU 01, 04, 01, 03 as inserted by 1992, 312:1 as follows:

		FY 92	FY 93
Insert:			
99 OIT/data processing reorg	* F	574,631	213,870

\* No expenditures will be made from these funds without prior approval of the data base management advisory committee.

Strike out:

Total	585,384	618,232
Estimated source of funds for Financial Data Management		
General fund	<u>585,384</u>	<u>618,232</u>
Total	585,384	618,232

Insert in place thereof:

Total	1,160,015	832,102
Estimated source of funds for Financial data management		
General funds	<u>1,160,015</u>	<u>832,102</u>
Total	1,160,015	832,102

10 Department of Health and Human Services; Data Management.

Amend 05, 01, 01, 02, 02 as inserted by 1991, 312:1 as follows:

**FY 92** **FY 93**

Strike out:

29 Transfer to info. services A	1,400,000	1,400,000
---------------------------------	-----------	-----------

Insert in place thereof:

29 Transfer to info. services A	1,974,631	1,998,750
---------------------------------	-----------	-----------

Strike out:

Total	3,797,422	3,836,942
Estimated source of funds for Data management		
00 Federal funds	1,148,152	1,160,088
General fund	<u>2,649,270</u>	<u>2,676,854</u>
Total	3,797,422	3,836,942

Insert in place thereof:

Total	4,372,053	4,435,692
Estimated source of funds for Data management		
00 Federal funds	1,722,783	1,758,838
General fund	<u>2,649,270</u>	<u>2,676,854</u>
Total	4,372,053	4,435,692

11 Department of Administrative Services; Computer Services.

Amend 01, 04, 03, 02 as inserted by 1992, 312:1 as follows:

**FY 92** **FY 93**

Strike out:

10 Personal services-permanent	983,343	998,396
16 Personal services-non-class	49,630	49,830

Insert in place thereof:

10 Personal services-permanent	983,343	1,048,226
16 Personal services-non-class	49,630	
12 Department of Administrative Services; Agency Revenues.		
Amend 01, 04, 03, 05 as inserted by 1991, 312:1 as follows:		
	<b>FY 92</b>	<b>FY 93</b>

Strike out:

Estimated source of  
funds for agency  
revenue

01 Other agency funds I	\$2,417,444	\$2,335,414
General fund	<u>2,417,444-</u>	<u>2,335,414-</u>

Total

Total	5,600,715	5,101,521
-------	-----------	-----------

Estimated source of  
funds for division  
information services

General fund	3,183,271	2,766,107
Other funds	<u>2,417,444</u>	<u>2,335,414</u>

Total

5,600,715	5,101,521
-----------	-----------

Insert in place thereof:

Estimated source of  
funds for agency  
revenues

01 Other agency funds I	\$2,992,075	\$2,934,164
General fund	<u>2,992,075-</u>	<u>2,934,164-</u>

Total

Total	5,600,715	5,101,521
-------	-----------	-----------

Estimated source of  
funds for division  
information services

General fund	2,608,640	2,167,357
Other funds	<u>2,992,075</u>	<u>2,934,164</u>

Total

5,600,715	5,101,521
-----------	-----------

13 Secretary of State; Elections Division. Amend PAU 01, 05, 02 as inserted by 1991, 312:1 as follows:

**FY 92**      **FY 93**

Strike out:

20 Current expenses	250,156	131,728
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Insert in place thereof:

20 Current expenses	249,656	131,728
---------------------	---------	---------

Insert:

90 Training	500	
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14 Secretary of State; Auctioneers Board. Amend PAU 01, 05, 06 as inserted by 1991, 312:1 as follows:

	FY 92	FY 93
Insert:		
80 Out-of-state travel	1,238	
15 Division of Historic Preservation; Administration. Amend PAU 01, 06, 04, 01 as inserted by 1991, 312:1 as follows:		

	FY 92	FY 93
Strike out:		
20 Current expenses	15,000	15,000
Total	297,835	298,359
Estimated source of funds for HPO-federal programs		
00 Federal funds	160,880	163,241
General funds	136,955	135,118
Total	297,835	298,359

Insert in place thereof:		
20 Current expenses	55,757	37,109
Total	338,592	320,468
Estimated source of funds for HPO-federal programs		
00 Federal funds	160,880	163,241
General funds	136,955	135,118
02 Highway funds	40,757	22,109
Total	338,592	320,468

16 Division of Historic Preservation; HPO-Federal Programs. Amend PAU 01, 06, 04, 02 as inserted by 1991, 312:1 as follows:

	FY 92	FY 93
Strike out:		
90 Certified local government	9,700	9,700
60 Benefits	46,948	46,948
Total	213,352	213,352
Estimated source of funds for HPO-federal programs		
00 Federal funds	213,352	213,352
Total	213,352	213,352
Insert in place thereof:		
50 Personal service-Temp/Appointe	2,700	20,000
60 Benefits	47,130	48,478
90 Pass through to local government	34,362	34,362
Total	240,896	259,544

Estimated source of funds  
for HPO-federal programs

00 Federal funds		180,739	180,739
02 Highway funds	* I	<u>60,157</u>	<u>78,805</u>
Total		240,896	259,544

\* These funds are for the associated cost of the division's review of state and federal highway undertakings, as required by RSA 227-C:9. During budget preparation each biennium, the division will submit to the budget officer quantitative information which supports their use of highway funds.

17 Department of Transportation; Other Highway Support; Transfers to Other Agencies. Amend PAU 04, 01, 07, 04 as follows:

**FY 92      FY 93**

Insert:

92 Historical resources      \$100,914      \$100,914

18 State Treasury; Sources of Funds for Administration. Amend the following state treasury PAU's as inserted by 1991, 312:1 as follows:

**FY 92      FY 93**

01, 08, 01

Strike out:

01 Other agency funds      \$ 60,000      \$ 60,000

Insert in place thereof:

01 Other agency funds      60,000      70,605

Strike out:

General fund      691,404      709,053

Insert in place thereof:

General fund      691,404      698,448

01, 08, 02

Strike out:

10 Personal services-permanent      89,907      92,966

Insert in place thereof:

10 Personal services-permanent      89,907      93,042

Insert:

49 Transfers to other state agencies      10,605

Strike out:

60 Benefits      26,972      27,890

Insert in place thereof:

60 Benefits      26,972      27,913

Strike out:

Total      236,279      240,256

Insert in place thereof:

Total      236,279      250,960

Strike out:

07 Agency income	236,279	240,256
------------------	---------	---------

Insert in place thereof:

07 Agency income	236,279	250,960
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19 Treasury Positions. Upon the effective date of this act, position number 11597 in PAU 01, 08, 02 within the state treasury shall be abolished and the position of claims processor II, SG 11 shall be established.

20 Redistribution of Judicial Branch Funds. Amend the following judicial branch PAU's as inserted by 1991, 312:1 as follows:

	<b>FY 92</b>	<b>FY 93</b>
--	--------------	--------------

I. 02, 01, 01

Strike out:

70 In-state travel	\$ 35,080	\$ 35,080
--------------------	-----------	-----------

Insert in place thereof:

70 In-state travel	37,080	37,080
--------------------	--------	--------

Strike out:

Total	3,460,994	3,492,044
-------	-----------	-----------

Strike out

General fund	3,460,994	3,492,044
--------------	-----------	-----------

Insert in place thereof:

General fund	3,462,994	3,494,044
--------------	-----------	-----------

II. 02, 01, 02

Strike out:

24 Maintenance other than buildings & grounds	172,107	179,607
--	---------	---------

Insert in place thereof:

24 Maintenance other than buildings & grounds	162,107	169,607
--	---------	---------

Strike out:

70 In-state travel	199,000	199,000
--------------------	---------	---------

Insert in place thereof:

70 In-state travel	249,000	249,000
--------------------	---------	---------

Strike out:

91 Transcribing services	30,000	30,000
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Insert in place thereof:

91 Transcribing services	43,000	45,000
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Strike out:

93 Guardian ad litem	200,000	200,000
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Insert in place thereof:

93 Guardian ad litem	384,000	200,000
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Strike out:

98 Jury fees and expenses	1,305,650	1,305,650
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Insert in place thereof:

98 Jury fees and expenses	1,208,650	1,295,650
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Strike out:		
Total	14,131,989	14,126,450
Insert in place thereof:		
Total	14,271,989	14,171,450
Strike out:		
General fund	12,822,888	12,817,349
Insert in place thereof:		
General fund	12,962,888	12,862,349
III. 02, 01, 03		
Strike out:		
24 Maintenance other than buildings and grounds	42,748	60,248
Insert in place thereof:		
24 Maintenance other than buildings and grounds	22,748	40,248
Strike out:		
70 In-state travel	3,300	3,300
Insert in place thereof:		
70 In-state travel	6,300	6,300
Strike out:		
97 Tpr. guardianship	200,000	200,000
Insert in place thereof:		
97 Tpr. guardianship	245,000	200,000
Strike out:		
Total	2,733,921	2,777,593
Insert in place thereof:		
Total	2,761,921	2,760,593
Strike out:		
General fund	2,688,745	2,719,517
Insert in place thereof:		
General fund	2,716,745	2,702,517
IV. 02, 01, 04		
Strike out:		
24 Maintenance other than buildings and grounds	168,639	218,639
Insert in place thereof:		
24 Maintenance other than buildings and grounds	133,639	183,639
Strike out:		
70 In-state travel	21,806	21,806
Insert in place thereof:		
70 In-state travel	36,806	36,806
Strike out:		
Total	11,377,920	11,012,380

Insert in place thereof:

Total	11,357,920	10,992,380
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Strike out:

General fund	9,914,976	9,561,794
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Insert in place thereof:

General fund	9,894,976	9,541,794
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V. 02, 01, 06

Strike out:

92 Sheriff reimbursement	1,039,502	1,039,502
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Insert in place thereof:

92 Sheriff reimbursement	889,502	1,029,502
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Strike out:

Total	1,777,902	1,795,613
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Insert in place thereof:

Total	1,627,902	1,785,613
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Strike out:

General fund	1,777,902	1,795,613
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Insert in place thereof:

General fund	1,627,902	1,785,613
--------------	-----------	-----------

21 Supplemental Appropriations. In addition to any other sums for the fiscal year ending June 30, 1993, the following appropriations are hereby authorized to the following departments:

02 Admin of justice & public protection

04 Department of justice

03 Division of legal counsel

01 Civil law

13 Assistant attorneys general	*	44,688
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20 Current expense		5,000
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60 Benefits		12,512
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70 In-state travel		1,000
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Total		63,200
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Estimated source of funds for  
criminal justice

09 Agency income I		63,200
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Total		63,200
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\* The department shall hire one full-time assistant attorney general for the primary purpose of gathering information and providing investigative support to the board of registration in medicine.

05 Health and social services

01 Dept of health and hum svcs

07 Admin of attached board

06 Medicine, board of

01 Administration & support



49 Transfers to other	
state agencies	<u>63,200</u>
Total	63,200
Estimated source of funds for	
Administration & support	
General fund	<u>63,200</u>
Total	63,200

22 Funds Lapsed and Transferred. Amend the following PAU's as inserted by 1991, 312:1 as follows:

I. By inserting footnote G in class 30 of the following judicial branch PAU's:

- (a) 02, 01, 01.
- (b) 02, 01, 02.
- (c) 02, 01, 03.
- (d) 02, 01, 04.
- (e) 02, 01, 06.

II. By inserting footnote D in class 93 of the following department of corrections PAU's:

- (a) 02, 16, 03, 06, 03.
- (b) 02, 16, 05, 01.
- (c) 02, 16, 06, 01.

23 Supplemental Appropriation; Department of Justice. Amend PAU 02, 04, 01, 01 as inserted by 1991, 312:1 as follows:

	FY 92	FY 93
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Insert:

93 Litigation expense	*	85,000	250,000
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\* This appropriation shall be used for the purposes of RSA 7:12 in the conduct of investigating and prosecuting criminal cases and shall not be transferred or expended for any other purpose.

Strike out:

Total	1,254,334	1,928,152
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Insert in place thereof:

Total	1,339,334	2,178,152
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Strike out:

General fund	1,254,334	1,928,152
--------------	-----------	-----------

Insert in place thereof:

General fund	1,339,334	2,178,152
--------------	-----------	-----------

24 Supplemental Appropriation; Department of Agriculture, Division of Soil Conservation.

I. It is the intent of this section to facilitate the joint efforts of landowners, land occupiers, and units of government in carrying out measures for the conservation and development of lands in the state. In order to make this effort possible, state funds are necessary to ensure that funding from federal sources are not lost. In order to receive federal funds from the United States Department of Agricul-

ture and the National Soil Conservation Service, the state is required to provide a percentage of the funds to be used as a basis for securing matching federal funds. The funds appropriated in paragraph II shall only be used to match federal funds, as required by federal law.

II. In addition to any other sums appropriated to PAU 02, 03, 07, soil conservation, the sum of \$20,000 is hereby appropriated to such PAU for the biennium ending June 30, 1993. The governor is authorized to draw his warrant for said sum out of any money in the treasury not otherwise appropriated.

25 Office of Attorney General; Regulatory Boards and Commissions; Marital Mediator Certification Board Established. Amend 1991, 312:1.02 by inserting the following PAU:

**FY 93**

02 Admin of Justice & Public Prtn

06 Regulatory Boards & Commission

05 Marital Mediator Certification Board

91 Administrative Expenses 5,000

Total 5,000

Estimated Source of Funds For Marital

Mediator Certification Board

General Fund 5,000

Total 5,000

26 Department of Safety; Office of Commissioner; 1993 Out-Of-State Travel Increased. Amend PAU 02, 15, 01, 01 as inserted by 1991, 312:1 as follows:

**FY 92**

**FY 93**

Strike out:

80 Out-of-state travel 5,000 5,250

Total 605,018 626,636

Estimated source of funds for

Office of commissioner

02 Highway funds 605,018 626,636

Total 605,018 626,636

Insert in place thereof:

80 Out-of-state travel \* 39,000

Total 600,018 660,386

Estimated source of funds for

Office of commissioner

02 Highway funds 600,018 660,386

Total 600,018 660,386

\* This appropriation is exempt from the provisions of section 25 of this act.

27 Department of Safety; Division of State Police; Traffic Bureau; Personal Service /Temporary Increased. Amend PAU 02, 15, 05, 03 as inserted by 1991, 312:1 as follows:

Strike out:

50 Personal service-temp/appointee	<u>271,464</u>	<u>271,464</u>
Total	12,909,403	13,080,031
Estimated source of funds for traffic bureau		
01 Other agency funds I	2,452,787	2,485,206
02 Highway Funds	<u>10,456,616</u>	<u>10,594,825</u>
Total	12,909,403	13,080,031

Insert in place thereof:

50 Personal service-temp/appointee	<u>321,464</u>	<u>321,464</u>
Total	12,959,403	13,130,031
Estimated source of funds for traffic bureau		
01 Other agency funds I	2,462,287	2,494,706
02 Highway funds	<u>10,497,116</u>	<u>10,635,325</u>
Total	12,959,403	13,130,031

28 Footnote Changed; Fish and Game Department. Amend 1991,  
312:1.03, 01, 02, 02, 01 as follows:

Strike out:

98 Habitat improvement G	23,000	23,000
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Insert in place thereof:

98 Habitat improvement	** 23,000	23,000
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\*\* Revenue from the sale of timber in excess of \$23,000 shall be added to class 98, with prior approval of the fiscal committee and is hereby appropriated and shall not be transferred or expended for any other purpose. Any shortfall in this estimated revenue shall be a charge against the fish and game fund. The balance of said appropriation shall not lapse but shall be carried forward to the subsequent year.

29 Department of Resources and Economic Development; Division of Economic Development; Travel and Tourism Development; 1993 Funding Increased. Amend PAU 03, 03, 02, 03 as inserted by 1991, 312:1 as follows:

**FY 92                      FY 93**

Strike out:

90 Printing adv and promotion	\$1,521,662	\$1,519,931
93 Joint promotional advertising	* G 700,000	700,000

\* An amount not exceeding 20 percent of the total appropriation may be transferred to printing and advertising with the approval of the fiscal committee and governor and council.

Total	2,441,215	2,441,282
Estimated source of funds for travel & tourism development		
General fund	<u>2,441,215</u>	<u>2,441,282</u>
Total	2,441,215	2,441,282

Insert in place thereof:

90 Printing adv and promotion	1,521,662	1,819,931
93 Joint promotional advertising * G	700,000	1,000,000

\* An amount not exceeding 30 percent of the total appropriation may be transferred to printing and advertising with the approval of the fiscal committee and governor and council.

Total	2,441,215	3,041,282
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Estimated source of funds for  
travel & tourism development

General fund	<u>2,441,215</u>	<u>3,041,282</u>
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Total	2,441,215	3,041,282
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30 Forest Protection Bureau; Fire Control. Amend PAU 03, 03, 03, 02, 01 as inserted by 1991, 312:1 as follows:

	<b>FY 92</b>	<b>FY 93</b>
Strike out:		
51 Personal services-fire tower D	227,199	224,999

Insert in place thereof:

51 Personal services-fire tower *	265,199	224,999
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\* This appropriation shall not be transferred or expended for any other purpose and shall not lapse until June 30, 1993.

Strike out:

Total	852,357	852,400
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Insert in place thereof:

Total	890,357	852,400
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Strike out:

General fund	792,357	792,400
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Insert in place thereof:

General fund	830,357	792,400
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31 Department of Environmental Services; Laboratory Cost Center; Footnote Deleted. Amend PAU 03, 04, 01, 02 as follows:

	<b>FY 92</b>	<b>FY 93</b>
Strike out:		
01 Other agency funds I	700,373	740,103

Insert in place thereof:

01 Other agency funds	700,373	740,103
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Strike out:

09 Agency income I	93,780	94,966
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Insert in place thereof:

09 Agency income	93,780	94,966
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32 Footnote Deleted; Water Supply Program. Amend PAU 03, 04, 03, 04, 03 as inserted by 1991, 312:1 as follows:

	<b>FY 92</b>	<b>FY 93</b>
Strike out:		
09 Agency Income I	356,962	370,133

Insert in place thereof

09 Agency Income 356,962 370,133  
 33 Department of Transportation; Appropriation Increased. Amend  
 the following department of transportation PAU's as follows:

**FY 92      FY 93**

**I. PAU 04, 01, 01, 01**

Strike out:

22 Rents & leases other than state 4,000 4,000

Insert in place thereof:

22 Rents & leases other than state 4,000 19,025

**II. PAU 04, 01, 03, 01**

Strike out:

10 Personal services-permanent 4,324,930 4,355,268

Insert in place thereof:

10 Personal services-permanent 4,324,930 4,523,593

Strike out:

60 Benefits 1,348,174 1,357,275

Insert in place thereof:

60 Benefits 1,348,174 1,407,773

**III. PAU 04, 01, 03, 04, 01**

Strike out:

10 Personal services-permanent 690,746 695,067

Insert in place thereof:

10 Personal services-permanent 690,746 724,259

Strike out:

60 Benefits 214,499 216,161

Insert in place thereof:

60 Benefits 214,499 224,919

**IV. PAU 04, 01, 03, 05**

Strike out:

10 Personal services-permanent 1,052,918 1,055,440

Insert in place thereof:

10 Personal services-permanent 1,052,918 1,123,281

Strike out:

60 Benefits 327,425 328,823

Insert in place thereof:

60 Benefits 327,425 349,175

**V. PAU 04, 01, 03, 06**

Strike out:

10 Personal services-permanent 1,309,318 1,321,442

Insert in place thereof:

10 Personal services-permanent 1,309,318 1,375,633

Strike out:

60 Benefits 410,835 415,474

Insert in place thereof:

60 Benefits 410,835 431,731

## VI. PAU 04, 01, 03, 07

Strike out:

10 Personal services-permanent	3,039,555	3,046,574
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Insert in place thereof:

10 Personal services-permanent	3,039,555	3,123,639
--------------------------------	-----------	-----------

Strike out:

60 Benefits	996,340	1,003,138
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Insert in place thereof:

60 Benefits	996,340	1,026,258
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## VII. PAU 04, 01, 03, 09

Strike out:

10 Personal services-permanent	1,145,101	1,157,982
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Insert in place thereof:

10 Personal services-permanent	1,145,101	1,192,887
--------------------------------	-----------	-----------

Strike out:

60 Benefits	346,928	353,493
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Insert in place thereof:

60 Benefits	346,928	363,965
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## VIII. PAU 04, 01, 07, 04

Strike out:

90 Department of safety	31,854,699	32,254,883
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Insert in place thereof:

90 Department of safety	31,854,699	32,329,133
-------------------------	------------	------------

Strike out:

95 H & HS - expert witness program	385,562	153,649
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Insert in place thereof:

95 H & HS - expert witness program	385,562	481,111
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## IX. PAU 04, 01, 08, 01

Strike out:

49 Transfers to other state agencies	D 2,474,268	2,508,017
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Insert in place thereof:

49 Transfers to other state agencies	D 2,474,268	2,517,517
--------------------------------------	-------------	-----------

34 Purpose. The intent of sections 35 - 46 of this act is to adjust previously appropriated but unused nonlapsing state funds and matching federal funds. Sections 35 - 46 also adjust state and federal aid highway appropriation accounts and provide the additional state matching funds necessary to fund the federal apportionment through June 30, 1992. These adjustments will have no effect on the highway fund surplus account.

35 Transfer to Adjust Federal Apportionment for Fiscal Year 1990 Through Fiscal Year 1991. The general court hereby authorizes the reallocation in the amount of \$403,387.85 to the department of transportation for fiscal year 1992 for the purpose of providing the state matching requirements upon adjusting the federal aid highway appro-

priation accounts in fiscal year 1992. This shall be a nonlapsing appropriation. The commissioner of administrative services is directed to issue a warrant to implement the following:

PAU and Title	Organization Account	Amount
I. State matching funds increased:		
(a) 04, 01, 03, 10, 01 Interstate	3023	\$401,694.72
(b) 04, 01, 03, 10, 12 Demo discretionary	3245	1,693.13
Total		<u>\$403,387.85</u>
II. State matching funds decreased:		
(a) 04, 01, 03, 10, 02 Primary	3054	316,486.52
(b) 04, 01, 03, 10, 05 Metro Transit	3059	19,291.11
(c) 04, 01, 03, 10, 11 Demonstration	3244	2,836.75
(d) 04, 01, 03, 10, 14 HPR Revenue	3060	64,773.47
Total		<u>\$403,387.85</u>

36 Implementation. To carry out the provisions of section 35 of this act, the commissioner of transportation may accept such additional federal funds to provide a matching federal share and such federal funds are hereby appropriated. Further, prior to June 30, 1992, the commissioner of transportation shall provide to the commissioner of administrative services the combined applicable estimated federal fund adjustments associated with prior appropriations and the allocation of the additional estimated federal funds between the respective federal aid appropriation accounts. The commissioner of administrative services shall process the appropriate adjustments in fiscal year 1992.

37 Transfers Authorized. The commissioner of administrative services is also directed to transfer on July 1, 1992, the balances in the following appropriation codes to enable the department of transportation to clear all old accounts off the appropriation statements.

Organization Code	Transfer From Title	Organization Code	Transfer To Title
3055	Secondary	3054	Consolidated Federal Aid
3058	Urban D	3054	Consolidated Federal Aid
3072	Roadside Obstacles	3054	Consolidated Federal Aid
3073	Railroad Grade Crossing	3054	Consolidated Federal Aid

38 Reduced Appropriation for Department of Transportation; Project Development Division. Amend 1991, 312:1.04, 01, 03, 10, 01 by replacing it with the following:

04 Transportation

01 Department of transportation

03 Project

10 Matching funds

01 Interstate

41 Audit fund set aside	D	11,468	12,752
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90 Other expenditures	D	<u>12,094,150</u>	<u>13,447,692</u>
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Total		12,105,618	13,460,444
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Estimated source of funds for

Interstate

00 Federal funds		11,468,480	12,752,000
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Highway funds		<u>637,138</u>	<u>708,444</u>
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Total		12,105,618	13,460,444
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39 Appropriation for Department of Transportation; Consolidated Federal Aid. Amend 1991, 312:1.04, 01, 03, 10, 02 by replacing it with the following:

04 Transportation

01 Department of transportation

03 Project development division

10 Matching funds

02 Consolidated federal aid

41 Audit fund set aside	D	53,492	62,672
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90 Other expenditures		<u>58,858,904</u>	<u>73,284,680</u>
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Total		58,912,396	73,347,352
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Estimated source of funds for

Consolidated federal aid

00 Federal funds		53,492,017	62,672,000
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05 Private local funds		650,000	650,000
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09 Other agency income		1,500,000	
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Highway funds		<u>3,270,379</u>	<u>10,025,352</u>
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Total		58,912,396	73,347,352
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40 Bond Issue Authorized. To provide funds for the purpose of project development in PAU 04, 01, 03, 10, 02 in section 39 of this act, the state treasurer is hereby authorized to borrow upon the credit of the state in a sum not exceeding \$7,000,000 for the biennium ending June 30, 1993, and for that purpose may issue bonds and notes in the name and on behalf of the state of New Hampshire in accordance with the provisions of RSA 6-A. The interest and principal due on bonds or notes issued under this section shall be a charge on the highway fund. The moneys provided in this section shall be a continuing appropriation and shall not lapse.



41 Appropriation for Department of Transportation; Metro Transit. Amend 1991, 312:1.04, 01, 03, 10, 05 by replacing it with the following:

04 Transportation

01 Department of transportation

03 Project development division

10 Matching funds

05 Metro transit

41 Audit fund set aside	D	583	636
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90 Other expenditures		<u>728,671</u>	<u>794,364</u>
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Total		729,254	795,000
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Estimated source of funds for

Metro transit

00 Federal funds		583,403	636,000
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05 Private local funds		36,463	39,750
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Highway funds		<u>109,388</u>	<u>119,250</u>
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Total		729,254	795,000
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42 Appropriation for Department of Transportation; Bridge Replacement. Amend 1991, 312:1.04, 01, 03, 10, 08 by replacing it with the following:

04 Transportation

01 Department of transportation

03 Project development division

10 Matching funds

08 Bridge replacement

41 Audit fund set aside	D	11,707	13,018
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90 Other expenditures		<u>13,658,810</u>	<u>15,132,232</u>
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Total		13,670,517	15,145,250
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Estimated source of

Funds for bridge

Replacement

00 Federal funds		11,707,126	13,018,000
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05 Private local funds		500,000	500,000
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Highway funds		<u>1,463,391</u>	<u>1,627,250</u>
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Total		13,670,517	15,145,250
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43 Appropriation for Department of Transportation; Rural Technical Assistance. Amend 1991, 312:1.04, 01, 03, 10, 09 by replacing it with the following:

04 Transportation

01 Department of transportation

03 Project development division

10 Matching funds

09 Rural technical assistance

41 Audit fund set aside	D	100	100
90 Other expenditures		<u>200,000</u>	<u>200,000</u>
Total		200,100	200,100
Estimated source of Funds for rural Technical assistance			
00 Federal Funds		100,000	100,000
Highway Funds		<u>100,100</u>	<u>100,100</u>
Total		200,100	200,100

44 New PAU; Department of Transportation; Forest Highways.  
Amend 1991, 312:1 by inserting after PAU 04, 01, 03, 10, 12 the following new PAU:

04 Transportation

01 Department of transportation

03 Project development division

10 Matching funds

13 Forest highways

41 Audit fund set aside	D	465	465
90 Other expenditures		<u>464,173</u>	<u>464,173</u>
Total		464,638	464,638
Estimated source of Funds for forest highway			
00 Federal funds		<u>464,638</u>	<u>464,638</u>
Total		464,638	464,638

45 Appropriation for Department of Transportation; HPR Revenue.  
Amend 1991, 312:1.04, 01, 03, 10, 14 by replacing it with the following:

04 Transportation

01 Department of transportation

03 Project development division

10 Matching funds

14 HPR revenue

41 Audit fund set aside	D	1,137	1,137
90 Other expenditures		<u>1,135,676</u>	<u>1,135,676</u>
Total		1,136,813	1,136,813
Estimated source of Funds for HPR revenues			
00 Federal funds		<u>1,136,813</u>	<u>1,136,813</u>
Total		1,136,813	1,136,813

46 New PAU's; Department of Transportation; Public Lands;  
Nashua River Bridge. Amend 1991, 312:1 by inserting after PAU 04,  
01, 03, 10, 14 the following new PAU's:

## 04 Transportation

## 01 Department of transportation

## 03 Project development division

## 10 Matching funds

## 15 Public lands

41 Audit funds set aside	D	950	0
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90 Other expenditures		<u>949,050</u>	<u>0</u>
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Total		950,000	0
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Estimated source of funds for  
Public lands

00 Federal funds		<u>950,000</u>	<u>0</u>
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Total		950,000	0
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## 04 Transportation

## 01 Department of transportation

## 03 Project development division

## 10 Matching funds

## 16 Nashua river bridge

41 Audit funds set aside	D	93	93
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90 Other expenditures		<u>92,945</u>	<u>92,945</u>
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Total		93,038	93,038
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Estimated source of funds for  
Nashua river bridge

00 Federal funds		<u>93,038</u>	<u>93,038</u>
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Total		93,038	93,038
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47 Redistribution of Funds; Department of Transportation. Amend 1991, 312:1 by inserting class 25 in the following amounts in the following department of transportation PAU's:

PAU		FY 92	FY 93
04, 01, 01, 01			
25 Lease of state owned equipment	K		36,500
04, 01, 01, 02			
25 Lease of state owned equipment	K		150
04, 01, 01, 03			
25 Lease of state owned equipment	K		3,500
04, 01, 01, 04			
25 Lease of state owned equipment	K		250
04, 01, 01, 05			
25 Lease of state owned equipment	K		2,000
04, 01, 02, 01			
25 Lease of state owned equipment	K		4,669,225
04, 01, 02, 02, 01			
25 Lease of state owned equipment	K		372,000
04, 01, 02, 03			
25 Lease of state owned equipment	K		477,000

PAU		FY 92	FY 93
04, 01, 03, 01			
25 Lease of state owned equipment	K		169,000
04, 01, 03, 02			
25 Lease of state owned equipment	K		55,000
04, 01, 03, 03			
25 Lease of state owned equipment	K		5,000
04, 01, 03, 04, 01			
25 Lease of state owned equipment	K		45,000
04, 01, 03, 05			
25 Lease of state owned equipment	K		31,500
04, 01, 03, 06			
25 Lease of state owned equipment	K		137,900
04, 01, 03, 07			
25 Lease of state owned equipment	K		337,000
04, 01, 03, 08			
25 Lease of state owned equipment	K		600
04, 01, 03, 09			
25 Lease of state owned equipment	K		42,864

48 Redistribution of Funds; Department of Transportation. Amend the following department of transportation PAU's as follows:

PAU	FY 92	FY 93
04, 01, 02, 01		
Strike out		
20 Current expenses	14,100,180	12,885,692
Insert in place thereof		
20 Current expenses	14,100,180	9,483,692
PAU	FY 92	FY 93
04, 01, 02, 02, 01		
Strike out		
20 Current expenses	615,670	650,268
Insert in place thereof		
20 Current expenses	615,670	407,268
04, 01, 02, 03		
Strike out		
20 Current expenses	992,143	1,049,651
Insert in place thereof		
20 Current expenses	992,143	685,151
04, 01, 02, 04		
Strike out		
09 Agency income C	3,725,000	4,050,000
Insert in place thereof		
09 Agency income C	3,725,000	6,384,489

04, 01, 03, 06

Strike out

20 Current expenses	71,435	75,403
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Insert in place thereof

20 Current expenses	71,435	34,903
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49 New Footnote. Amend 1991, 312:1.07, Budget Footnotes, by inserting after footnote J the following new footnote:

K. The funds in this appropriation are for the lease of state-owned equipment from the operations division, mechanical services bureau, and shall not be transferred to be used for any other purpose. Transfers may be made between funds appropriated in class 25 in other PAU's with prior approval of both the capital budget overview committee and the governor and council.

50 Repeal. The following PAU's are repealed:

I. 1991, 312:1.04, 01, 03, 10, 03, relative to department of transportation, secondary.

II. 1991, 312:1.04, 01, 03, 10, 04, relative to department of transportation, urban D.

III. 1991, 312:1.04, 01, 03, 10, 06, relative to the department of transportation and roadside obstacles.

IV. 1991, 312:1.04, 01, 03, 10, 07, relative to the department of transportation and railroad grade crossings.

V. 1991, 312:1.04, 01, 03, 10, 11, relative to the department of transportation and demonstration funds.

VI. 1991, 312:1.04, 01, 03, 10, 12, relative to the department of transportation and discretionary demonstration funds.

51 Office of Emergency Medical Services; Funds for Training for Emergency Medical Technicians in Grafton and Coos Counties.

I. Amend PAU 05, 01, 02, 02, 01 as inserted by 1991, 312:1 as follows:

	<b>FY 92</b>	<b>FY 93</b>
Strike out:		
10 Personal services-permanent	\$389,880	\$396,490
Insert in place thereof:		
10 Personal services-permanent	389,880	443,836
Strike out:		
60 Benefits	116,964	118,947
Insert in place thereof:		
60 Benefits	116,964	132,204
Strike out:		
70 In-state travel	15,000	15,000
Insert in place thereof:		
70 In-state travel	15,000	20,397
Strike out:		
Total	910,220	876,884

Estimated source of funds  
for emergency medical services

00 Federal funds	675,653	675,653
General fund	<u>234,567</u>	<u>201,231</u>
Total	910,220	876,884

Insert in place thereof:

Total	910,220	942,884
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Estimated source of funds  
for emergency medical services

00 Federal funds	675,653	675,653
General fund	<u>234,567</u>	<u>267,231</u>
Total	910,220	942,884

II. The additional funds appropriated in this section shall be used to fund training for emergency medical technicians in Grafton and Coos counties.

52 Department of Health and Human Services; Public Health Laboratories. Amend PAU 05, 01, 02, 03, 03, as inserted by 1991, 312:1 by replacing it with the following:

05 Health and social services

01 Department of health and human services

02 Division of public health services

03 Disease prevention and control

03 Public health laboratories

	<b>FY 92</b>	<b>FY 93</b>
10 Personal services-permanent	\$797,596	\$933,969
20 Current expenses	214,981	262,945
22 Rents and leases other than state	950	1,000
24 Maintenance other than building and grounds	29,990	51,475
28 Transfers to general services D	137,941	138,232
30 Equipment new/replacement	6,655	9,729
40 Indirect costs E	20,561	20,451
50 Personal service-temp/appointe	39,049	46,770
60 Benefits	242,266	283,794
70 In-state travel	3,000	4,500
80 Out-of-state travel	2,000	6,000
90 Drugged driving program		72,502
97 Grants and contracts	49,720	55,379
98 Testing for drugged driving	<u>240,000</u>	
Total	1,784,709	1,886,746
Estimated source of funds for public health laboratories		
01 Other agency funds I	25,420	25,420

02 Highway funds I	385,562	481,111
05 Private local funds I	637,823	634,549
General funds	<u>735,904</u>	<u>745,666</u>
Total	1,784,709	1,886,746

53 Additional Appropriation for Catastrophic Illness Program; Department of Health and Human Services. Amend PAU 05, 01, 02, 04, 02 as inserted by 1991, 312:1 as follows:

	<b>FY 92</b>	<b>FY 93</b>
Strike out:		
94 Catastrophic illness program	241,512	241,512
Insert in place thereof:		
94 Catastrophic illness program	354,012	466,512
Strike out:		
Total	2,956,610	2,958,384
Estimated source of funds for special medical services		
00 Federal funds	870,595	870,595
General fund	<u>2,086,015</u>	<u>2,087,789</u>
Total	2,956,610	2,958,384
Insert in place thereof:		
Total	3,069,110	3,183,384
Estimated source of funds for special medical services		
00 Federal funds	870,595	870,595
General fund	<u>2,198,515</u>	<u>2,312,789</u>
Total	3,069,110	3,183,384

54 Transfer from General Fund to Federal Funds; Bureau of Children; Department of Health and Human Services. Amend 1991, 312:1.05, 01, 03, 02, 01, fiscal year 1993 as follows:

	<b>FY 93</b>
Strike out:	
00 Federal Funds	4,792,600
General Fund	<u>3,730,899</u>
Total	8,523,499
Insert in place thereof:	
00 Federal Funds	4,842,600
General Fund	<u>3,680,899</u>
Total	8,523,499

55 Division of Human Services; Child Support Enforcement; Transferring County Attorneys' Duties Under the Uniform Enforcement of Support Act to the Office of Child Support and Enforcement Services. Amend PAU 05, 01, 04, 02, 03 as follows:

	<b>FY 92</b>	<b>FY 93</b>
Strike out:		
10 Personal services-permanent	3,419,032	3,476,431
Insert in place thereof:		
10 Personal services-permanent	3,419,032	3,760,625
Strike out:		
20 Current expenses	124,000	126,900
Insert in place thereof:		
20 Current expenses	124,000	183,739
Strike out:		
30 Equipment new/replacement	90,700	
Insert in place thereof:		
30 Equipment new/replacement	90,700	38,500
Strike out:		
60 Benefits	1,025,710	1,042,929
Insert in place thereof:		
60 Benefits	1,025,710	1,128,187
Strike out:		
70 In-State travel	95,000	100,000
Insert in place thereof:		
70 In-State travel	95,000	118,000
Strike out:		
00 Federal funds	1,484,842	1,573,117
Insert in place thereof:		
00 Federal funds	1,484,842	1,891,759
Strike out:		
General fund	1,370,124	1,452,058
Insert in place thereof:		
General fund	1,370,124	1,616,207
Strike out:		
Total	2,854,966	3,025,175
Insert in place thereof:		
Total	2,854,966	3,507,966
56 Division of Human Services; Program Operations; Jobs Program. Amend PAU 05, 01, 04, 02, 04 as inserted by 1991, 312:1 as follows:		

	<b>FY 92</b>	<b>FY 93</b>
Strike out:		
91 Transportation	728,430	728,430
Insert in place thereof:		
91 Transportation	883,997	728,430
Strike out:		
92 Employment & training support	170,000	170,000
Insert in place thereof:		
92 Employment & training support	404,521	170,000



## Strike out:

00 Federal funds	1,096,473	1,105,709
General fund	<u>923,781</u>	<u>924,947</u>
Total	2,020,254	2,030,656

## Insert in place thereof:

00 Federal funds	1,291,517	1,105,709
General fund	<u>1,118,825</u>	<u>924,947</u>
Total	2,410,342	2,030,656

57 Redistribution of Federal Funds; AFDC; Department of Health and Human Services. Amend PAU 05, 01, 04, 04, 01 as inserted by 1991, 312:1 as follows:

	FY 92	FY 93
Strike out:		
91 Emergency assistance program	F 800,000	0
Insert in place thereof:		
91 Emergency assistance program	800,000	800,000
Strike out:		
00 Federal funds	25,132,408	25,238,684
09 Agency income	2,187,931	2,187,931
General fund	<u>22,919,369</u>	<u>23,025,539</u>
Total	50,239,708	50,452,154
Insert in place thereof:		
00 Federal funds	25,132,408	25,638,684
09 Agency income	2,187,931	2,187,931
General fund	<u>22,919,369</u>	<u>23,425,539</u>
Total	50,239,708	51,252,154

58 Supplemental Appropriation; Rabies Surveillance Program. The sum of \$27,000 for the fiscal year ending June 30, 1993, is hereby appropriated to the division of public health services, department of health and human services, and the sum of \$6,000 for the fiscal year ending June 30, 1993, is hereby appropriated to the fish and game department to carry out a rabies surveillance program. These appropriations shall be in addition to any other appropriations made to the division of public health services, department of health and human services, and to the fish and game department. The governor is authorized to draw his warrant for said sums out of any money in the treasury not otherwise appropriated.

59 Supplemental Appropriation; Division of Elderly and Adult Services. The sum of \$200,000 for the fiscal year ending June 30, 1993, is hereby appropriated to the division of elderly and adult services, department of health and human services for the purpose of obtaining a federal grant under the provisions of the National Affordable Housing Act. These funds shall be nonlapsing and non-transferable and in addition to any other funds appropriated to the

division of elderly and adult services. The governor is authorized to draw his warrant for said sum out of any money in the treasury not otherwise appropriated.

60 Appropriation; Medicaid. The following sums are appropriated, for the fiscal year ending June 30, 1993, to the division of human services, the department of health and human services for the purposes of providing medical assistance to pregnant women, infants and children whose income is less than 150 percent of the federal poverty level.

	<b>FY 92</b>	<b>FY 93</b>
Federal	204,523	917,874
General	<u>204,523</u>	<u>917,874</u>
Total	409,046	1,835,748

These appropriations shall be in addition to any other appropriations made to the division of human services, the department of health and human services. The governor is authorized to draw his warrant for said sums out of any money in the treasury not otherwise appropriated.

61 Supplemental Appropriation; Division for Children and Youth Services Case Management Systems. The sum of \$102,300 is hereby appropriated to the department of health and human services for the fiscal year ending June 30, 1993, to administer an automated case management system for the division for children and youth services. This appropriation shall be in addition to other sums appropriated to the department of health and human services. The governor is authorized to draw his warrant for said sum out of any money in the treasury not otherwise appropriated.

62 Appropriation; DCYS Case Management System. There is hereby appropriated to the department of health and human services the sum of \$3,100,000 for the purpose of developing and implementing an automated case management system for the division for children and youth services.

63 Bonds Authorized. To provide funds for the appropriation made in section 62 of this act, the state treasurer is hereby authorized to borrow upon the credit of the state not exceeding the sum of \$3,100,000 and for said purposes shall issue bonds and notes in the name of and on behalf of the state of New Hampshire in accordance with RSA 6-A. Payments of principal and interest of the bonds and notes shall be made from the general funds of the state. The bonds shall be 5-year bonds.

64 Appropriation; Aid to Permanently and Totally Disabled. The following sum is hereby appropriated to the division of human services, department of health and human services for the fiscal year

ending June 30, 1993, to pay grants and medical services authorized to the permanently and totally disabled under the provisions of RSA 167:6, VI:

	FY 93
General	104,640
County	104,640
Total	209,280

This appropriation is in addition to other sums appropriated to the division of human services, department of health and human services. The governor is authorized to draw his warrant for said sum out of any money in the treasury not otherwise appropriated.

65 Department of Education; Office of the Commissioner. Amend PAU 06, 03, 01, 01, 01 as inserted by 1991, 312:1 as follows:

I. By inserting in class 93, footnote F.

II. By amending class 91 footnote \*\*\* to read as follows:

\*\*\* This appropriation shall only be used for the continuation in FY 1992 of statewide testing at grades 4, 8, and 10 using the currently administered cat test. **Any funds remaining in class 91 on or after January 15, 1992, shall be transferred to PAU 06-03-01-01-01, class 93.**

66 Department of Education; Fair Hearings Unit. Amend PAU 06, 03, 01, 03, 02 as inserted by 1991, 312:1 as follows:

	FY 92	FY 93
Insert:		
30 Equipment New/Replacement	10,013	0
Insert:		
91 Depositions	7,500	0
Strike Out:		
Total	149,645	155,895
Insert in place thereof:		
Total	167,158	155,895
Strike out:		
General Fund	149,645	155,895
Insert in place thereof:		
General Fund	167,158	155,895

67 Department of Education; Special Education. Amend PAU 06, 03, 03, 06, 01 as inserted by 1991, 312:1 as follows:

Strike out:		
92 Catastrophic cost	8,000,000	8,000,000
Insert in place thereof:		
92 Catastrophic cost	7,957,487	8,000,000
Strike out:		
Total	8,782,278	8,785,526

Insert in place thereof:

Total	8,739,765	8,785,526
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Strike out:

General fund	8,782,278	8,785,526
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Insert in place thereof:

General fund	8,739,765	8,785,526
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68 Department of Education; Division of Vocational Rehabilitation; Rehabilitation Services; Field Programs; 1992-93 Funding Increased. Amend PAU 06, 03, 05, 03, 02 as inserted by 1991, 312:1 by replacing it with the following:

06 Education

03 Department of education

05 Division of vocational rehabilitation

03 Rehabilitative services

02 Field programs-match

	<b>FY 92</b>	<b>FY 93</b>
10 Personal services - permanent	\$1,692,993	\$1,814,833
18 Overtime	4,275	4,275
20 Current expenses	142,646	142,646
22 Rents & leases other than state	193,648	193,850
30 Equipment new/replacement	11,434	3,234
40 Indirect costs E	330,125	348,921
41 Audit fund set aside D	7,358	8,226
42 Transfer to cola D	33,940	36,593
46 Consultants	88,559	88,559
50 Personal service-temp/appointe	10,574	11,162
60 Benefits	509,990	546,587
70 In-state travel	54,848	53,673
80 Out-of-state travel	5,000	5,000
90 Rehabilitation services	<u>4,361,549</u>	<u>5,188,160</u>
Total	7,446,939	8,445,719
Estimated source of funds for		
Field programs-match		
00 Federal funds	5,665,362	6,349,896
General fund	<u>1,781,577</u>	<u>2,095,823</u>
Total	7,446,939	8,445,719

69 Department of Education; Division of Vocational Rehabilitation; Services for the Blind; Vending Stands; 1992-93 Funding Increased. Amend PAU 06, 03, 05, 04, 03 as inserted by 1991, 312:1 as follows:

	<b>FY 92</b>	<b>FY 93</b>
Strike out:		
41 Audit fund set aside D	213	223
90 Rehabilitative services	<u>16,276</u>	<u>24,317</u>
Total	220,968	231,241

## Estimated source of funds for

## Vending stands

00 Federal funds	170,146	175,743
01 Other agency funds	23,431	23,440
General fund	<u>27,391</u>	<u>32,058</u>
Total	220,968	231,241

## Insert in place thereof:

41 Audit fund set aside	D 233	253
90 Rehabilitative services	<u>36,276</u>	<u>54,317</u>
Total	240,988	261,271

## Estimated source of funds for

## Vending stands

00 Federal funds	188,379	195,961
01 Other agency funds	23,431	23,440
General fund	<u>29,178</u>	<u>41,870</u>
Total	240,988	261,271

70 Department of Education; Division of Instruction; Vocational Education-State; 1992-1993 Funding Decreased. Amend PAU 06, 03, 03, 05, 01 as inserted by 1991, 312:1 as follows:

**FY 92**                      **FY 93**

## Strike out:

90 Area vocational school tuition and trans	\$3,500,000	\$3,500,000
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## Insert in place thereof:

90 Area vocational school tuition and trans	3,227,000	3,227,000
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## Strike out:

Total	4,156,176	4,106,450
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## Insert in place thereof:

Total	3,883,176	3,833,450
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## Strike out:

General fund	4,156,176	4,106,450
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## Insert in place thereof:

General fund	3,883,176	3,833,450
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71 Division of Mental Health and Developmental Services; Community Residences. Other provisions of law notwithstanding, for the fiscal year ending June 30, 1992, the division of mental health and developmental services, is hereby authorized to utilize in PAU 05, 01, 05, 03, 03 community residences, with fiscal committee and governor and council approval, up to \$1,700,000 in federal revenue earned in excess of \$4,000,000 for services provided to residents of the intermediate care facility and in excess of \$10,400,000 for services provided to residents of the acute psychiatric facility.

72 Veterans' Home. Notwithstanding any other provision of law, if actual revenue received from funding sources is less than the amount estimated for PAU's 05, 02, 01 and 05, 02, 02, the total appropriation for the veterans' home shall not be reduced and shall be available for expenditure as budgeted.

73 Department of Education; Vocational Education-State. Position number 30382 funded in fiscal years 1992 and 1993 by PAU 06, 03, 03, 05, 01 shall be exempt from any executive order of the governor relating to vacant positions and the 90-day drag on vacant positions by the fiscal committee beginning in October, 1991. Any funds transferred from PAU 06, 03, 03, 05, 01 to the department of administrative services as a result of positions made vacant under executive order of the governor or the 90-day drag in fiscal years 1992 and 1993 shall be restored to PAU 06, 03, 03, 05, 01 as those positions are filled after the effective date of this section.

74 Division of Human Services; Support Enforcement Positions. The positions funded in fiscal years 1992 and 1993 by PAU 05, 01, 04, 02, 03 shall be exempt from the provisions of 1991, 355:124 relative to vacant positions. Any funds transferred from PAU 05, 01, 04, 02, 03 to the department of administrative services as a result of positions made vacant under 1991, 355:124 in fiscal years 1992 and 1993 shall be restored to PAU 05, 01, 04, 02, 03 as those positions are filled after the effective date of this section.

75 Department of Health and Human Services; Office of the Commissioner. The position number 12341 funded in fiscal years 1992 and 1993 by PAU 05, 01, 01, 02, 01 shall be exempt from the provisions of 1991, 355:124 relative to vacant positions. Any funds transferred from PAU 05, 01, 01, 02, 01 to the department of administrative services as a result of positions made vacant under 1991, 355:124 in fiscal years 1992 and 1993 shall be restored to PAU 05, 01, 04, 02, 03 as those positions are filled after the effective date of this section.

76 Transfer from Department of Education to Division of Mental Health and Developmental Services. At the close of business on the last day of the month of the effective date of this act, all funds and positions, including positions numbered 19179, 19180, 19181, 19182, 19183, and incumbents, within PAU 06, 03, 03, 06, 05 (infant and toddler program) within the department of education for fiscal years 1992 and 1993, which have not been expended, shall be transferred to new PAU 05, 01, 05, 03, 09 (infant and toddler program) within the department of health and human services, division of mental health and developmental services, in order to carry out the provisions of Executive Order 91-7. Existing encumbrances and obligations established under the department of education's internal accounting con-

trol system within PAU 06, 03, 03, 06, 05 shall also be transferred to the division of mental health and developmental services, PAU 05, 01, 05, 03, 09, as encumbrances.

77 Department of Safety Positions. 1991, 312:10 is repealed and reenacted to read as follows:

**312:10 Personal Services Limitation.**

I. The executive head of each department or agency shall determine which currently authorized positions shall be filled within the limitations of the personal services appropriations for the department or agency. In making this determination, the executive head shall be governed by the total personnel classifications which were available to the department or agency in fiscal year 1991 plus any new positions authorized by the general court.

II. The following positions in the department of safety are hereby authorized, provided that they shall be filled within the limitations of the personal services appropriations for the department of safety:

<b>Budget Number</b>	<b>Position Numbers</b>
02-15-01-02	18044, 18045
02-15-01-03	14363, 14341
02-15-02-01	18675
02-15-02-02	10514
02-15-02-03	10618, 18687, 10653
02-15-02-04	18697
02-15-02-06	10411, 10522
02-15-03-01	10560, 30070
02-15-03-02	30079, 18678
02-15-03-03	10643
02-15-03-04	10605, 10595, 10624 10628, 10562, 10646 10430
02-15-03-05	30080
02-15-04-02	10661
02-15-04-04	10837, 18685, 18686
02-15-05-01	18703
02-15-05-03	10633, 10674, 10843 10684, 10717, 10782 10719, 18647, 18711 10697, 10739

78 Fiscal Year 1993-94 State Budget Committee; Purpose. The general court recognizes that, given current expenditures and projected revenues, the potential exists for a substantial deficit to exist in the 1993-1994 operating budget. The general court further recognizes that the size of the problem and solutions to correct it will require careful consideration by the legislative and executive

branches of state government. It is therefore, in the best interest of the citizens of the state of New Hampshire to begin a discussion of the anticipated problem and to suggest ways of mitigating its impact on the delivery of state services.

79 State Budget Advisory Committee Established.

I. There is established the fiscal year 1993-1994 state budget advisory committee which shall prepare its appraisal of the fiscal problems facing the state during the 1993-1994 fiscal years. The committee shall also prepare recommendations on the appropriate means of managing the problem. The report of the committee shall serve as a guideline for the executive and legislative branches of government as they prepare the 1993-1994 operating budget.

II. The committee shall include the following members:

- (a) The governor.
- (b) The president of the senate.
- (c) The speaker of the house.
- (d) One member appointed by the governor.
- (e) One member appointed by the senate president.
- (f) One member appointed by the speaker of the house.
- (g) The state treasurer.
- (h) The commissioner of the department of revenue administration.
- (i) The commissioner of administrative services.
- (j) The legislative budget assistant.

III. The committee shall elect its chairman at its first meeting, which shall be called by the governor within 15 days of the effective date of this act. The committee shall meet as it deems necessary and shall submit its findings no later than August 1, 1992.

80 Budget Reductions Not Affected. Any budget reductions made by state agencies and departments affecting 1991, 312 shall not be affected by the provisions of this act.

81 Adjustment of Amounts, Figures, Estimates and Totals. The commissioner of administrative services shall adjust all amounts, figures, estimates and totals for 1991, 312, the 1992-1993 operating budget, as made necessary by the passage of this act.

82 Effective Date. This act shall take effect upon its passage.

SENATOR BLAISDELL: Mr. President and members of the Senate, first of all, in the calendar, there is a typo in that dental thing. It says 'rural', and that is not in there, so there were some questions on that. I wanted you to know that before we start. You may recall on February 13 because we needed time to review agency requests and establish the Senates position, we passed HB 1053. That was the supplemental appropriation act, which provided an additional appropriation for certain programs for the continued and uninterrupted



operations until April 1. Well, since that time, and with an agreement that this Senate body would have this before the Senate before March 31. And as you know, today is March 26, have it in the House, and have the conference committee over with by the ninth and on the Governor's desk by April 15. Since we passed 1053, we have been hearing agency testimony on 1025 and 1026. We excepted agency requests, we considered all of this material, and keeping in mind throughout the process, the Senate's positive position relative to the policy legislation of this body, and I emphasize that this body has passed the required appropriation. It was the LBA's Office who has been working diligently, day and night, along with Senator Hough and other members of the Senate Finance committee to bring this 1025 before you today. Included in HB 1025, in addition to operating requirements, are appropriations to fund Senate policy legislation; and I might add, I will give you an example, such as SB 319, which increases medicaid eligibility for pregnant women and children. SB 376 relative to congregate services, that Senator Podles is so interested in and others. SB 334, which has the rabies surveillance and there are many others, I could go on but this has been a long afternoon and I want to get on with this. HB 1025 as amended by the Senate Finance committee, appropriates \$56,600,000 in general fund dollars. In highlighting some of the things of the major pieces of this amendment, section one of this amendment, from pages two to eight, accounts for \$53,000,000 of the \$56,000,000, which is 92 percent of the total general fund dollars appropriated. Included in this \$53,000,000 appropriation is \$43,800,000 for Human Services, \$5,200,000 for Children and Youth Services and \$3,200,000 for Corrections. I want this clearly understood that in years past, that we in this Senate, have said that we would have a Senate position. This is a Senate position. This is not a Governor's position, this is certainly not the House's position, but this is the Senate's position. You have charged the Senate Finance committee to carry out the wishes of the Senate, and as I said, the policy decisions that you have made in this Senate, and already have voted on, are in this document. I might add that when this is all over with, this document that we hope will pass, will end up with over half a million dollars in surplus. The LBA's Office is here to answer any questions that you might have. Senator Hough has all the technical things that we could talk about. I ask your complete support. In doing that, I thank the LBA's Office for the hard work that they put into this, and for the members of the Senate Finance committee who worked very hard. Thank you.

SENATOR NELSON: Senator Blaisdell, all I want to know is, on page 22, I just really wanted to . . . on page 22, II, and then you have the asterisks. I guess I just wanted to know about that state testing

and then any funds remaining in class 91? I just want a little information about that education piece, if you could?

SENATOR BLAISDELL: Where are you Mary?

SENATOR NELSON: Excuse me, I am on page 22.

SENATOR BLAISDELL: Mary, I don't find it there. Do you have the right one?

SENATOR NELSON: HB 1025?

SENATOR CURRIER (In the Chair): Senator Nelson, we are working on the amendment which is in the calendar.

SENATOR BLAISDELL: I don't know what you mean, Mary, because I have judicial and mutual transfers on page 22.

SENATOR HOUGH: It has to do with the Department of Education. The subject, I believe, is assessments which is student testing. In the biennial budget bill that we passed a year ago, and you have it in front of you, Mary. But I believe that is said that the policy committees in the first year of the biennium would work with the state board and that the funds that were not expended in the fiscal year 1992, to continue the present California Achievement Test would lapse to the development of the new test. There were dates in the biennial budget act, relative to fiscal year 1992, the last one being January 15, 1992 which has passed us. So those letters are dark and they have been removed. The lapse now goes, the monies not expended now, goes into the development of the new test.

SENATOR NELSON: It says, "any funds remaining in 1991, the class of 91, would be transferred to class 1993." I wanted to understand better, what is 1991 to 1993?

SENATOR HOUGH: 1991 was the continuation of the California Achievement Test Program . . .

SENATOR NELSON: Alright.

SENATOR HOUGH: And the other number was the development of a replacement test and in conjunction with the policy members of the legislature and the state board. Really that section only eliminates the language that is no longer needed because we are passed the date.

SENATOR NELSON: Thank you.

SENATOR HUMPHREY: Senator Blaisdell, I am looking on page 35, item #18, Sky Haven renovation, etc.

SENATOR BLAISDELL: Sky Haven renovation?

SENATOR HUMPHREY: Yes.

SENATOR BLAISDELL: I think that that is HB 1026, Senator. That is HB 1026, I believe, this is 1025. Do you have the right calendar, because we have two or three different calendars that have come out? Excuse me, you are on the right one. You are right. I am going to defer to Senator Hough.

SENATOR HUMPHREY: Yes. Apparently the supplemental amendment before us, amends a bill earlier passed, changing the law.

SENATOR PODLES: I am working from the amendments and I see something here that I would like to question. The marriage license fees, instead of going to the state treasurer, they will now be going to the Department of Health and Human Services, and I want to know why?

SENATOR HOUGH: There are a number of fees, including the marriage license fees that had previously gone to the general fund and then a defunct in the agencies were appropriated against the general fund. These funds now go back to the agency where the activity takes place. This is an administrative change. There is no net effect in terms of the dollars. The dollars collected would drive the function, and it is more clean in terms of the administrated procedures.

SENATOR PODLES: They used to go to the state treasurer and now they are changed to the Department of Health and Human Services, and I want to know . . .

SENATOR HOUGH: That is where the vital statistics are best and the revenues drive that function will now go to the Department of Public Health. The Bureau of Vital Statistics, as opposed to going all into the general fund and then general fund dollars being appropriated to funds that function in Public Health.

SENATOR PODLES: Could you tell me the advantage of this? What is it going to do?

SENATOR HOUGH: It is a more correct receive and distribution of money. People that pay for a marriage license, the revenues for the marriage license appropriated, are appropriating against the treasury to support the Bureau of Vital Statistics and the Bureau of Vital Statistics will be operated out of the revenues derived from the marriage licenses.

SENATOR BLAISDELL: It is management that is cost effective, I guess is what you want to say, really.

SENATOR HOUGH: If your concern is, is there a plus or minus on the activity at the Bureau of Vital Statistics, the answer is no. The Bureau of Vital Statistics budget is predicated on the receipt of mar-

riage license fees. Instead of going to the treasury and appropriating out of the treasury for the activity, it is direct. The monies come into the Bureau of Vital Statistics to cover the expense to the agency. There are others similar to that, I believe it is a user fee. We have a Bureau of Vital Statistics that is supported by the fees from marriage licenses, as with other pieces. This is just cleaner administrative passing, if you will. They won't be spending more or less, they will be limited to the income that derives from the fee.

SENATOR HOLLINGWORTH: A follow up on that. I don't see anything in the section on the marriage license fee that indicates that there has been a change to where the monies are going, but I recall that there was a portion of the marriage license fee that went to fund the shelters for domestic violence. I want to be sure that that is still, even though the change of who is going to be receiving the marriage license fee, will not in anyway hamper that funding?

SENATOR HOUGH: Beverly, there is no diversion. The staff prepared the amendment and reviewed the amendment in conjunction with the executive branch of government. Clearly, that is not the case. So rest assured, that there will be no change.

SENATOR HOLLINGWORTH: Thank you. My next question is, I was wondering if there was any number that you could give us, or some indication of what the proportion share for the counties will be for the increases that they will share in the state and county charges that will be increased?

SENATOR HOUGH: The answer would be to the extent that \$43,800,000 of general fund support in Human Services, being the add on if you will, that percentage of non federal, non state, that make up that value, will be the impact of the political subdivision that participate in the program. But failure to accommodate the increased caseloads, would put the financial liability at 100 percent at the local level and support at 100 percent by the local property tax. In this simple answer to this, is that there are programs to aid, to permanently and totally disabled that the non federal share is made up of state and local support. If we do not pick up these additional members, the members still exist, these human beings and they will be 100 percent supported by the local communities or counties at which will be 100 percent on the property tax.

SENATOR HOLLINGWORTH: You don't have a dollar number though, at this time?

SENATOR HOUGH: It wouldn't take long to get one. Well alright, then the answer is either \$13,000,000 or \$14,000,000.

SENATOR COLANTUONO: First of all, could you explain paragraph 20 of the bill that redistributes the court budget; and specifically, could you address whether this bill funds any new judges that were authorized last year?

SENATOR HOUGH: I would answer you, Senator Colantuono. The bill as you have it before you, it regards the Judiciary as the position of the House appropriations committee as it passed that to us. But a more direct answer is, that the court has historically gone to the Fiscal committee for approval of moving monies amongst lines. In as much as the legislature is in session, the Chairman of the Fiscal committee, instructed the Judicial Branch to prepare the amendment that would otherwise be approved by the Fiscal committee and have the House Appropriations committee and the Senate Finance committee included in the budget adjustment act, so that the whole legislature, 424 members could have that as part of their document. If we were not in session and they brought those transfers forward, which they have done historically, it would have been approved by the Fiscal committee. There is no plus or minus on the expenditures, it is transfers amongst lines.

SENATOR COLANTUONO: I have a series of questions. Could you let us know how many new positions are authorized and funded in this piece of legislation?

SENATOR HOUGH: There are 10 engineering positions in the Department of Transportation, which are critically needed to implement, if you will, the new federal transportation act. That is the significant addition of positions. There are other reclassifications, again, that historically have been approved by the Fiscal committee, but have been included in the House version at the direction of the Chairman of Fiscal, who is also the Chair of House Appropriations. You will not see the Senate position other than the positions in the Department of Transportation adding two positions. You have to look at what the House gave us and our change, and you won't find new positions.

SENATOR COLANTUONO: Aside from those 10 in the amendment, how many positions did the House bill have?

SENATOR HOUGH: I don't think that you are going to find a significant change.

SENATOR CURRIER (In the Chair): Senator Hough, did you find the answer to the question? Is it 100 or is it 50 or is it 25, or somewhere in between?

SENATOR HOUGH: The LBA is saying 20 to 25, including a number of reestablished positions that were eliminated as of July 1, with

the biennial budget eliminated all vacant positions as of July 1. There have been some positions that would have been reestablished by the Fiscal committee that are in this document. But the LBA answer is that less than 25, and most of them have been reestablishments of positions lost by retirement in the summer months.

SENATOR COLANTUONO: Can you tell us how much, if any, new bonding is authorized in this piece of legislation?

SENATOR HOUGH: I can tell you that there is a total, most of the bonding you will find, with the exception of \$7,000,000 in 1025, which is to drive the maximization of our allocation and entitlement under the new federal highway act, which is in 1025, Department of Transportation, the balance is in 1026. We have a gross number on bonding that we will give you. That figure in total bonding is \$25,000,000, I believe. Wait, \$15,000,000 of general fund bond obligations for the balance of the biennium and \$5,000,000 and \$7,000,000 for the Highway Fund, Tom.

SENATOR COLANTUONO: So, \$27,000,000?

SENATOR HOUGH: Yes. They're in pieces of both bills. The \$7,000,000 is in the Department of Transportation. The balance of the bond authorization is in 1026.

SENATOR COLANTUONO: In paragraph 55 of the bill, it deals with child support enforcement, transferring county attorneys duties, page 27, under the uniform enforcement of support act to the Office of Child Support. If I recall, the policy bill that we passed, if I recall it correctly, we made the effective date September 1, 1993, so it wouldn't be done in this biennium, but I see that the changes are made in the funding. So I am questioning, is my memory wrong, or what is going on, and why is this change going on?

SENATOR HOUGH: We passed the policy bill and put the funding into the budget adjustment act and if you are telling me that the function will be assumed in September of 1992 . . .

SENATOR COLANTUONO: 1993.

SENATOR HOUGH: September of 1992 is fiscal year to 1993.

SENATOR COLANTUONO: Right. But, I think, we passed the effective date to be September 1 of 1993, that was our intent anyway. So it wouldn't be in this biennium.

SENATOR HOUGH: What page are you on?

SENATOR COLANTUONO: Twenty-seven.

Recess.

Out of recess.

SENATOR HOUGH: If what you are telling me is correct, then this money that is appropriated in fiscal year 1993, will not be expended and will lapse. If it was your attempt not to pick up what the counties had previously been providing the state, we can correct that by moving the date to September 1992 and then you will have the dollars to assume the function that the counties were assuming. If you want to do nothing, what we have appropriated will lapse this fall, at the end of the biennium and we will then have to appropriate it for the next biennium. I am not sure what your intent was.

SENATOR COLANTUONO: Well the intent when the bill was passed, was that the program wouldn't go into effect until the next biennium for the specific reason that we didn't think that we had the funds this biennium. I guess my question is, shouldn't we change this paragraph, because the . . . all that we are doing really is upping the PAU's for those items, and if the agency wants to spend that money, can't they spend that money even if they don't have the program?

SENATOR HOUGH: It is our understanding that the counties have been providing certain child support enforcement services out of county budgets. It is properly the responsibility of the Department of Health and Human Services, Child Support Enforcement. The counties have been concerned that their resources are being expended, the Sheriff's and their personnel to do a state function. We recognized that it more properly belongs in the state's budget, and we have appropriated the money. What you are telling me is, that you changed the statute for the next biennium and those funds that we have appropriated, unless we amend the statute, will lapse.

Recess.

Out of recess.

SENATOR COLANTUONO: Once this passes, what will be the total budget for the 1992-93 biennium?

SENATOR HOUGH: Senator Blaisdells', I think, remarks indicated that the biennial budget will have an increased general funds of \$56,600,000. That would be \$100,450,000. It is up \$56,600,000 over, I believe that we appropriated \$13,000,000 in February.

SENATOR COLANTUONO: But do you know the total bottom line? Is it \$4 billion and something?

SENATOR HOUGH: It is \$1 billion. The biennial general fund appropriation . . .

SENATOR COLANTUONO: The total budget?

SENATOR HOUGH: The total biennium is going to be \$4 billion.

SENATOR COLANTUONO: Just \$4 billion? Once this has passed, will this be enough money to carry us through to the end of the biennium or do you expect a further supplemental budget early next year?

SENATOR HOUGH: It would be my opinion, that no assumptions have been made relative to significant reduction in caseloads. These numbers would carry us to the balance of the biennium, June 31, 1993, without a further supplemental. The caveat being, if things continue to deteriorate and in the last 60 days, we have seen a flat-trending if not a reduction in the increase, but as of this point, provided the appropriation to meet what is known to the balance of the biennium.

SENATOR COLANTUONO: What is the source of funding for the general fund appropriations in this bill?

SENATOR HOUGH: I don't know how to answer that other than, all sources of revenue. If you are asking if it is maximizing the Medicaid reimbursement monies that this body and this legislature addressed in November. It has predicated on the last estimate on revenue from the revenue committees. You can answer it two ways, the source of funding is state revenue. But that isn't what you wanted to ask me, I believe.

SENATOR PRESSLY: My question is relative to the white paper, so I am not sure exactly where it transfers, but at some point, and particularly, it seems to be in the borrowing revenue stabilization reserve account. You are changing a word from 'year' to 'biennium' and I would like to know why you are doing that?

SENATOR HOUGH: That is correct. I will answer that in this way: were we not to make that change, the balance at the end of June this year, would not be available for fiscal year 1993, because it would be used to replenish, if you will, the so-called rainy day fund. We are correcting the law so that the "rainy day fund will kick in at the end of the biennium." We have a biennial budget, and there are many instances where one of the two years might be plus or minus. It so happens with the infusion of the Medicaid funds, that instead of them being used to drive state services, that they would be channeled into the so-called revenue stabilization fund. That is a needed change.

SENATOR NELSON: Page 15 of the bill.

SENATOR HOUGH: You have to appreciate, Mary, the document that I am using is not different than yours, but I have been working with it for a month and I have notes in the white, so if you just show me where it is and ask me your question.



SENATOR NELSON: It had to do with you putting in or hiring a one time assistant attorney general for the purpose of gathering information and providing investigative support to the Board of Registration and Medicine. Would you comment on that? With all the problems in the state, how is it that they are getting this position filled, if they are?

SENATOR HOUGH: The Board of Registration of Medicine has been supporting the, I think the term is, prosecution of licensed medical practitioners and they have been paying for it. So we are taking funds from the Board of Registration and Medicine and transferring them to the Department of Justice, to fund a position to support the activities of the Board of Registration on investigation, malpractice and abuse. That change, if you will, was brought forward by the Board of Medical Registration.

SENATOR NELSON: So it was just a transfer of funds from one to the other, okay. Second question is, could you maybe just comment on the new PAU, the Department of Transportation, the forest highways, saying that it is a new piece. Is that because of the new surface transportation act?

SENATOR HOUGH: Forest highways?

SENATOR NELSON: Forest highways they are calling it.

SENATOR HOUGH: That is all part of the new transportation act. There are pages after pages. You will see also, the equipment revolving fund that we have all supported is in there.

SENATOR NELSON: I just wanted to have everybody aware of it. The other question is on page 25. I was interested in this, it is the Office of Emergency Medical Services Fund Training for Grafton and Coos county. Maybe just a comment on that? What is going on in Grafton and Coos that isn't going on everywhere else, or they already had the money and . . .

SENATOR HOUGH: No. If you will recall the biennial budget again funded a contract in the western side of the state for EMT services for one year, continuation of the contract. All of the areas in the state of New Hampshire, but the west coast, if you will, are trained by state employees. This was part of a contract that was in place, historically. We continued it for one year and now we are picking it up by the state agency and the employee. That change was understood, that it would be coming last June when we only did one year, hoping to continue, it was our own people in the second year.

SENATOR NELSON: Then in essence, the rest of the state is getting money or they are already trained and they don't need it?

SENATOR HOUGH: No change to the rest of the state. You either continue the contract or you have the state pick up that one area that they hadn't previously been covering.

SENATOR NELSON: Ralph, on the last page of this, on the fiscal year 1993-1994 state budget committee, the purpose of the committee and this new committee that you have established, the State Budget Advisory committee?

SENATOR HOUGH: Are we still in 1025?

SENATOR BLAISDELL: Yes.

SENATOR NELSON: It is on the last page.

SENATOR HOUGH: Then I would tell you that section that you are looking at, and I will also tell you that there will also be an amendment as offered by Senator Disnard, to revisit that question with his approval. Clearly we must recognize that the 300 and something odd million dollar figure of medicaid money is questionable for the next biennium. Clearly we understand, regardless of who is in office in fiscal year 1994, that the state will be facing at least a \$300,000,000 deficit, which could be 20 percent of the general fund support. We also know that a significant amount of our activity is the so-called entitlement programs that we have no control over because people are entitled to these services. I think that it is important; and under the leadership of Senator Dupont, that we have established a summit, if you will, to review that this very summer, before the agencies begin the preparation of their 94-95 budget, which will be presented to the Governor in November. There is no sense in the agencies preparing budgets when there is an anticipated \$300,000,000 general fund deficit for the new biennium without taking those issues into consideration. That is the purpose of the committee.

SENATOR NELSON: Senator Hough, would you believe that the reason that I brought that up was just to bring to the attention of my colleagues in the room, that this is one of the first pro-active stands that we have taken, that we are on top and that we are looking forward? I wanted to just, would you believe, commend the committee for having included that piece in here?

SENATOR HOUGH: I would except that, Senator Nelson. I would tell you that it was brought forward not by the committee, but under the leadership of Senator Dupont and Senator Disnard and he will speak to a floor amendment that strengthens that committee.

Committee amendment adopted.

SENATOR DISNARD: The floor amendment is being passed out right now. I would like to explain it now. The amendment referred to is #5561L, in the yellow pages, page 32. On page 32, you will excuse my statement, but it appears to be one-sided in terms of partisan, and we will be having a \$300,000,000 or \$400,000,000, possible, I hope not, deficit to address between \$300,000,000 and \$400,000,000. Then we may have to take some drastic measures in terms of present services. I believe that it was only realistic to have both large political parties represented on this committee out of fairness. So what the amendment shows, it does not change the number of members on the committee, but it does add the Senate Minority Leader and the House Minority Leader and it does eliminate one member appointed by the Senate President and one member appointed by the Speaker of the House, and as I understand it, it has approval of the Fiscal committee.

Senator Disnard offered a floor amendment.

**5561L**

**Floor Amendment to HB 1025-A**

Amend paragraph II as inserted by section 79 of the bill by replacing it with the following:

II. The committee shall include the following members:

- (a) The governor.
- (b) The president of the senate.
- (c) The senate minority leader.
- (d) The speaker of the house.
- (e) The house minority leader.
- (f) One member appointed by the governor.
- (g) The state treasurer.
- (h) The commissioner of the department of revenue administration.
- (i) The commissioner of administrative services.
- (j) The legislative budget assistant.

Floor amendment adopted.

Question is on third reading.

Recess.

Out of recess.

A roll call requested by Senator Humphrey.

Seconded by Senator Blaisdell.

The following Senators voted Yes: Oleson, W. King, Fraser, Hough, Dupont, Disnard, Roberge, Blaisdell, Bass, Pressly, Nelson, Colantuono, McLane, Podles, J. King, Russman, St. Jean, Shaheen, Delahunty, Hollingworth, Cohen.

The following Senators voted No: Heath, Humphrey.

Yeas 21

Nays 2

Ordered to third reading.

Recess.

Senator Russman in the Chair.

**HB 1026**, an act relative to a companion bill to the supplemental budget. Finance committee. Ought to Pass with Amendment. Senator Blaisdell for the committee.

**5511L**

### **Amendment to HB 1026**

Amend the bill by replacing all after the enacting clause with the following:

1 Borrowing Money. Amend RSA 6:13, II to read as follows:

II. Unless otherwise provided by the governor and council, the treasurer shall have the authority to borrow at one time, or from time to time, up to the aggregate amount authorized by the governor and council under this section, and to determine the amounts, dates, maturities, and other details of each borrowing[, provided that each such indebtedness shall be repaid from revenues within one year].

2 Revenue Stabilization Reserve Account; Reference Point Changed to Biennium. Amend RSA 9:13-e to read as follows:

9:13-e Revenue Stabilization Reserve Account.

I. Notwithstanding the definition of "budget" in RSA 9:1, for purposes of this section the term "budget" means the operating budget in effect for the appropriate fiscal [year] **biennium**.

II. There is hereby established within the general fund general ledger a revenue stabilization reserve account. At the close of each fiscal [year] **biennium**, any surplus, as determined by the official audit performed pursuant to RSA 21-I:8, I(h) shall be transferred by the comptroller to a special nonlapsing revenue stabilization reserve account. The comptroller is hereby directed to establish said revenue stabilization reserve account in which to deposit all money received from any general fund operating budget surplus. The state

treasurer shall invest funds in this account as authorized by RSA 6:8. The interest so earned shall be deposited as unrestricted general fund revenue.

III. In the event of a general fund operating budget deficit at the close of any fiscal [year] **biennium** as determined by the official audit performed pursuant to RSA 21-I:8, I(h), the comptroller shall notify the fiscal committee and the governor of such deficit and request that sufficient funds, to the extent available, be transferred from the revenue stabilization reserve account to eliminate such deficit. Such transfer may be made only when both of the following conditions have been met:

(a) A general fund operating budget deficit occurred for the most recently completed fiscal [year] **biennium**; and

(b) Unrestricted general fund revenues in the most recently completed fiscal [year] **biennium** were less than the budget forecast. The amount of said transfer shall not exceed a sum equal to the lower of the amount of the deficit in subparagraph (a) or the revenue shortfall in subparagraph (b). Upon receipt of approval from both the fiscal committee and the governor, the comptroller shall immediately transfer the sums so approved to the general fund surplus account.

IV. No available balance in the revenue stabilization reserve account shall be utilized for any purpose other than those authorized by paragraphs II and III, without the specific approval of 2/3 of each house of the general court and the governor.

V. If, after the requirements of paragraphs II-IV have been met and the balance remaining in the revenue stabilization reserve account is in excess of an amount equal to 5 percent of the actual general fund unrestricted revenues for the most recently completed fiscal year, then such excess shall be transferred, without further action, to the general fund surplus account.

3 Reclassification of Positions or Increases Beyond Grade 34. RSA 21-I:56 is repealed and reenacted to read as follows:

21-I:56 Reclassification of Positions or Increases Beyond Grade 34.

I. Any request for reclassification of position to a different class series as provided in RSA 21-I:54 shall require the approval of governor and council.

II. Any request to increase the salaries of a classified position beyond grade 34 as provided in RSA 99:8 shall require the approval of the fiscal committee of the general court before it is submitted to the governor and council for its approval.

III. Notwithstanding the provisions of RSA 9:16, 9:17 and 17-a, whenever the director of personnel in consultation with the affected department shall determine that the personal renovation line item in any PAU and the salary adjustment fund cannot cover the cost of

funding a reclassification and a transfer of funds from other line items is required, the director of personnel shall notify the governor and council and the fiscal committee as soon as possible. No such transfer shall be permitted without approval first of the fiscal committee and then of governor and council.

4 Salary. Amend RSA 94:1-a, I by deleting in group M the following: manager, planning and support, division of information services.

5 Repeal. 1991, 346:17, relative to an appropriation to the office of information technology management, the department of administrative services and the department of health and human services, is repealed.

6 Port Authority Duties; Waiting Lists. Amend RSA 271-A:3, V(a) to read as follows:

V.(a) Be authorized to set and collect fees for mooring and slip permits **and waiting lists for such permits.**

7 Port Authority Rulemaking; Waiting Lists. Amend RSA 271-A:4, III to read as follows:

III. Setting and collecting fees for moorings, slips, **waiting lists** and pilotage. A table of such fees shall be attached to the commission of each pilot.

8 Marriage Fees; Reference Change. Amend RSA 457:29 to read as follows:

457:29 Marriage License Fee. The fee for the marriage license shall be \$40 to be paid by the parties entering into the marriage. The clerk shall forward \$33 from each fee to the [state treasurer] **department of health and human services** for the purposes of RSA 173-B:13. The clerk shall retain the remaining \$7 as his fee for making the records of notice, issuing the certificate of marriage, and forwarding the \$33 portion of the marriage license fee.

9 Marriage Fees; Reference Change. Amend RSA 457:29 to read as follows:

457:29 Marriage License Fee. The fee for the marriage license shall be \$20 to be paid by the parties entering into the marriage. The clerk shall forward \$13 from each fee to the [state treasurer] **department of health and human services** for the purposes of RSA 173-B:13. The clerk shall retain the remaining \$7 as his fee for making the records of notice, issuing the certificate of marriage, and forwarding the \$13 portion of the marriage license fee.

10 Dog License Fees; Reference Change. Amend RSA 466:9 to read as follows:

466:9 Payment of Fees.

I. Clerks of the towns and cities shall issue said licenses, receive the money therefor and pay the same into the treasuries of their respective towns and cities on or before June 1 each year, retaining to their own use \$.50 for each license and submitting \$.50 for each

license to the [state treasurer] **department of agriculture** for the purpose specified in paragraph II. The clerks shall return to their respective town or city treasurer a sworn statement of the amount of moneys thus received and paid over by them.

II. The \$.50 received by the [state treasurer] **department of agriculture** for each license issued pursuant to paragraph 1 shall be credited to a special nonlapsing fund to be used exclusively for the operation of the veterinary diagnostic laboratory established under RSA [443:96] **436:92**, and are hereby continually appropriated for such purpose to be expended under the supervision of the commissioner of agriculture.

11 Vital Records Fees. Amend RSA 126:15, II to read as follows:

II. The town clerk shall forward \$6 of each fee collected under this section to the [state treasurer] **division of public health services** for deposit in the vital records improvement fund established under RSA 126:31. The town clerk shall retain the remaining \$4 as his fee for issuing such a copy.

12 State Treasurer; Vital Records Improvement Fund. Amend RSA 6:12, I(tt) to read as follows:

(tt) Moneys received [from the town clerk] **by the division of public health services** under RSA 126:13, II, which shall be credited to the vital records improvement fund established in RSA 126:31.

13 New Subparagraph; State Treasurer; Veterinary Diagnostic Laboratory Fund. Amend RSA 6:12, I by inserting after subparagraph (uu) the following new subparagraph:

(vv) Moneys received by the department of agriculture under RSA 466:9 which shall be credited to the fund established in RSA 466:9, II.

14 National Guard Scholarship Fund. Notwithstanding the provisions of RSA 110-B:60 and 110-B:61, the amount of \$42,000 from the national guard scholarship fund shall lapse to the general fund on June 30, 1992.

15 Capital Appropriation; University System of New Hampshire; Renewal and Adaption of Existing Facilities System-Wide. There is hereby appropriated \$10,000,000 to the university system of New Hampshire for the purpose of, but not limited to, the meeting of life, safety and handicapped code requirements, upgrading of mechanical systems, repairs to roads and walkways, removal of asbestos and other hazardous materials and roof repairs and replacements.

16 Bonds Authorized. To provide funds for the appropriation made in section 15 of this act, the state treasurer is hereby authorized to borrow upon the credit of the state not exceeding the sum of \$10,000,000 and for said purpose shall issue bonds and notes in the name of and on behalf of the state of New Hampshire in accordance

with the provisions of RSA 6-A. The payment of principal and interest on the bonds or notes issued under this section shall be made when due from the general funds of the state.

17 Expenditures; University System of New Hampshire.

I. The appropriation made in section 15 shall be expended by the trustees of the university system of New Hampshire. All contracts for the renewal and adaption of existing facilities shall be let only after competitive sealed bids have been received and only after an advertisement calling for such bids has been published at least once in each of 2 successive calendar weeks in a newspaper of general circulation in New Hampshire or in a trade journal known to be circulated among the contractors from whom bids will be sought with the state of New Hampshire or elsewhere in the area. The first publication of such advertisement shall be not less than 30 days prior to the date the bids will be received. All conditions considered, wherever possible, it is recommended that the services of New Hampshire architectural and construction firms be considered within the discretion of the trustees.

II. The appropriation made in section 15 is available for all costs incidental to the renewal and adaption of existing facilities including the costs of the services of architects, engineers, and other consultants of such kind and capacity as the university system board of trustees may, in its discretion, wish to employ on such terms and conditions as the board determines. These moneys shall be spent under the direction of the university system board of trustees.

III. If, in the judgment of the trustees of the university system, just cause exists indicating the lowest bid should be rejected, then the contract may be awarded to the next lowest bidder; or, if the next lowest bid should be rejected, the contract may be awarded to the third lowest bidder.

IV. The board of trustees of the university system has the right to reject any and all bids and, if the lowest bid is in excess of the appropriation, the board has the right to negotiate with the low bidder or with the 3 lowest bidders for a contract for the construction upon terms considered most advantageous to the university. If only one bid is received, the board of trustees may negotiate a contract for the renewal and adaption of existing facilities on terms considered most advantageous to the university system and to the state. Any authorization contained in this act which is at variance with the requirements of applicable federal law and regulations shall be controlled by the terms of the federal law and regulations.

18 Skyhaven Renovation and/or Replacement. Amend 1991, 351:1, X, A, 2 to read as follows:

2. Skyhaven - renovate **and/or replace**  
administration building

85,000



19 Skyhaven; Appropriation Increased. Amend 1988, 152:1 to read as follows:

152:1 Appropriation. There is hereby appropriated to the department of transportation the sum of [\$400,000] **\$550,000** for the purpose of designing and constructing additional hangar facilities at Skyhaven airport.

20 Skyhaven; Bonds. Amend 1988, 152:2, as amended by 1989, 367:25 to read as follows:

152:2 Bonds Authorized. To provide funds for the appropriation made in section 1 of this act, the state treasurer is hereby authorized to borrow upon the credit of the state not exceeding the sum of [\$400,000] **\$550,000** and for said purpose shall issue bonds and notes in the name of and on behalf of the state of New Hampshire in accordance with the provisions of RSA 6-A. The bonds shall be 10-year bonds. The interest and principal due on the bonds or notes issued under this paragraph shall be a direct charge against the Skyhaven hangar revenues, but the faith and credit of the state shall be pledged for the payment of the bonds.

21 Appropriation; Division of Aeronautics. The sum hereinafter detailed is hereby appropriated to the department of transportation, division of aeronautics, for the projects specified.

I. Lebanon Airport - general aviation

apron expansion, taxiway

to runway 36

\$1,415,000

Less federal

- 1,273,500

Less local

- 70,750

Total appropriation paragraph I

\$ 70,750

22 Bonds Authorized. To provide funds for the total of the appropriation of state funds made in section 21 of this act, the state treasurer is hereby authorized to borrow upon the credit of the state not exceeding the sum of \$70,750 and for said purposes may issue bonds and notes in the name and on behalf of the state of New Hampshire in accordance with the provisions of RSA 6-A.

23 Payments. The payment of principal and interest on bonds and notes issued for the project in section 21 shall be made when due from the general funds of the state.

24 Appropriation; Department of Transportation. Notwithstanding RSA 235:23-a, relative to funding for highway and bridge betterment, the sum of \$5,000,000 is hereby appropriated in addition to any other sums appropriated, to the department of transportation for the fiscal year ending June 30, 1993, for the purpose of highway construction, reconstruction, and resurfacing in any highway district in the state. The sum in this section shall be a continuing appropriation and shall not lapse.

25 Bonds Authorized. To provide funds for the appropriation made in section 24 of this act, the state treasurer is hereby authorized to borrow upon the credit of the state not exceeding the sum of \$5,000,000 and for said purpose may issue bonds and notes in the name of and on behalf of the state of New Hampshire in accordance with RSA 6-A. Payments of principal and interest of the bonds and notes shall be made from the highway fund.

26 Pease Appropriation to Lapse. Amend 1991, 355:110 to read as follows:

355:110 Appropriation; Pease Development Authority. A sum not to exceed \$2,800,000 is appropriated to the Pease development authority for its operating budget for the fiscal year ending June 30, 1992, upon the approval of such operating budget by the governor and council, the board of directors of the Pease development authority, and the fiscal committee. **This appropriation shall lapse on June 30, 1993.**

27 Appropriation; Pease Development Authority. A sum not to exceed \$3,800,000 is appropriated to the Pease development authority for its operating budget for the fiscal year ending June 30, 1993, upon the approval of such operating budget by the governor and council, the board of directors of the Pease development authority, and the fiscal committee.

28 Pease Bonds Authorized. To provide funds for the appropriation made in section 27 of this act, the state treasurer is authorized to borrow upon the credit of the state a sum not exceeding \$3,800,000 and for said purpose may issue general obligation bonds or notes in the name and on behalf of the state of New Hampshire in accordance with RSA 12-G:27, III. The payments of principal and interest of the bonds and notes shall be made when due from available funds of the authority in accordance with RSA 12-G:27, III.

29 New Subparagraph; Mt. Sunapee Snowmaking for Cataract/Fox Run Appropriation Added. Amend 1991, 351:1, VIII by replacing all after subparagraph B, 7 with the following:

8. Sunapee - Cataract/Fox	
Run snowmaking	<u>\$ 100,000</u>
Total subparagraph B	<u>\$ 1,640,000</u>
Total state appropriation paragraph VIII	\$ 3,140,000

30 Appropriation Amount Reference Changed. Amend 1991, 351:1 by replacing the total state appropriation for section 1 with the following:

Total state appropriation section 1	\$34,381,095
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31 Bonds; Reference Changed. Amend 1991, 351:10 to read as follows:

351:10 Bonds Authorized. To provide funds for the total of the appropriations of state funds made in sections 1, 2, 3, 4, 5, 6, and 7 of this act, the state treasurer is hereby authorized to borrow upon the credit of the state not exceeding the sum of [\$79,280,845] **\$79,380,845** and for said purposes may issue bonds and notes in the name and on behalf of the state of New Hampshire in accordance with the provisions of RSA 6-A. In order to provide funds to pay the cost of issuing the bonds authorized by this section, the state treasurer may issue bonds up to 102 percent of the authorized amounts. The proceeds from the additional bonds may be used only for the purpose of paying such issuance costs.

32 New Hampshire Economic Development Fund; Appropriation Increased. Amend 1991, 4:22 and 4:23 to read as follows:

4:22 Appropriation. The sum of [\$5,000,000] **\$6,000,000** is hereby appropriated to the department of resources and economic development for the purpose of carrying out the provisions of section 21 of this act. These funds shall be in addition to any other funds appropriated to the department and shall be nonlapsing.

4:23 Bonding Authorization. To provide funds for the appropriation made in section 22 of this act, the state treasurer is hereby authorized to borrow upon the credit of this state not exceeding the sum of [\$5,000,000] **\$6,000,000** and for said purpose may issue bonds and notes in the name of and on behalf of the state of New Hampshire in accordance with RSA 6-A, provided that such bonds shall be 15-year bonds.

33 Department of Administrative Services; Hanover-Lebanon District Court Capital Appropriation. The sum of \$500,000 is hereby appropriated to the department of administrative services for the sole purpose of acquiring, renovating, and furnishing a land and building suitable for the Hanover-Lebanon district court. The department of administrative services is authorized to negotiate the purchase of such land and building within the limits of the appropriated amount. A resulting purchase contract shall receive such review and approval as required by state law. This appropriation is in addition to any other funds appropriated to the department of administrative services.

34 Bonds Authorized. To provide funds for the total of the appropriation of state funds made in section 33 of this act, the state treasurer is hereby authorized to borrow upon the credit of the state not exceeding the sum of \$500,000 and for said purpose may issue bonds and notes in the name and on behalf of the state of New Hampshire in accordance with the provisions of RSA 6-A. The payment of prin-

cipal and interest on bonds and notes issued for such project shall be made when due from the general funds of the state.

35 Lapse Dates Extended. The following appropriations are hereby extended to June 30, 1993:

I. The appropriation made to the department of administrative services in 1991, 177:1, relative to the Nashua superior court furnishings and security systems.

II. The appropriation made to the department of administrative services in 1989, 367:1, II, A-B, as amended by 1991, 351:27, II(e), relative to Londergan hall renovations, and repair of the state house dome.

III. The appropriation made to the university system of New Hampshire in 1989, 367:2, D and E, for Mason Library renovations in Keene, design of a biological sciences center, and Dimond Library design and shelving in Durham.

IV. The appropriation made to the department of transportation in 1988, 152:1 as amended by 1991, 351:27, II(i) for the additional hangar facilities at Skyhaven airport.

V. The appropriations made to the aeronautics commission in 1981, 565:1, II as amended by 1983, 423:17, 1986, 211:18, 1989, 367:27, II(j) and 1991, 351:27, II(j) for the Skyhaven airport and the Skyhaven audit fund.

VI. The appropriation made to the aeronautics commission in 1979, 435:1, III, E as amended by 1983, 423:16, 1986, 211:14 and 1991, 351:27, II(k) for the Skyhaven airport.

VII. The appropriations made to the department of transportation in 1989, 367:1, XII, A, 1, 3 and 4 as amended by 1991, 351:27, II(l) for aeronautics projects.

36 Debt Management; RSA Chapter Suspended. The operation of RSA 6-C:1 is hereby suspended until July 1, 1995.

37 Effective Date.

I. Sections 1-8, 10-14, 18-20, 26, and 29-36 of this act shall take effect upon its passage.

II. Section 9 of this act shall take effect July 1, 1994.

III. The remainder of this act shall take effect July 1, 1992.

### AMENDED ANALYSIS

This bill:

(a) Authorizes the state treasurer to borrow without being required to repay the indebtedness within one year.

(b) Redefines the definition of "budget" within the revenue stabilization reserve account to mean the operating budget in effect for the appropriate fiscal biennium.

(c) Requires that the reclassification of positions or increases beyond grade 34 be approved by governor and council. Current law requires approval of the fiscal committee.

(d) Requires that certain fees collected by towns be forwarded directly to the appropriate state agency. Current law requires that such monies be forwarded to the state treasurer.

(e) Authorizes the port authority to set and collect fees for waiting lists.

(f) Lapses the national guard scholarship fund to the general fund.

(g) Makes a capital appropriation to the university system of New Hampshire.

(h) Makes a capital appropriation to the department of transportation, division of aeronautics for the purpose of expanding the apron and creating a runway at the Lebanon Airport.

(i) Increases the appropriation to the department of transportation for the purpose of designing and constructing additional hangar facilities at Skyhaven Airport.

(j) Authorizes the department of transportation to renovate and/or replace an administration building at Skyhaven. Current law authorizes the department to renovate the buildings.

(k) Makes an appropriation to the Pease development authority upon the approval of the authority's operating budget for fiscal year 1993 by the governor and council, the board of directors of the Pease development authority and the fiscal committee.

(l) Makes a bonded appropriation to the department of transportation for the fiscal year ending June 30, 1993, for the purpose of heavy construction, reconstruction, and resurfacing in any highway district in the state.

(m) Makes a bonded appropriation to the department of resources and economic development for snowmaking at Mt. Sunapee on Cataract/Fox Run.

(n) Increases a bonded appropriation to the department of resources and economic development.

(o) Extends the lapse dates for certain appropriations.

(p) Suspends the operation of RSA 6-C:1, relative to debt management, until July 1, 1995.

SENATOR BLAISDELL: Mr. President and members of the Senate, HB 1026 is the traditional trailer bill which follows the supplemental budget act to address issues of war which cannot be addressed in the budget act. The bill you will note, does not appropriate any money for operations, but does make a few changes in capital appropriations, capital projects and it amends some general statutes. The analysis of this bill is on page 37 and 38. Senate Finance asks your consideration and asks you to pass the bill.

SENATOR HUMPHREY: Senator Hough, I am looking at page 35 again. The sections relative to the Sky Haven Airport. The language of 3511 etc, as being changed from 'renovated administration building' to 'renovate and or replace administration building, \$85,000'. My concern here is that this is an effort to build a new administration building, since clearly you cannot build one for \$85,000. What is the purpose of this change in the language?

SENATOR HOUGH: Well since that refers to the Senator from Rochester, I will defer to Senator Dupont and let him answer the question.

SENATOR DUPONT: Senator Humphrey, last year we appropriated \$85,000 to renovate the existing building; and in fact, when the money was made available, they took a look at the existing building and determined that, yes, in fact they could tear it down and put up a new building for less than what it is going to cost them to renovate it. Possibly working cooperatively with the vocational schools in our areas, through their building and trades program to build a building on the site. One that would be constructed at probably the Summersworth High School in which they would then move in pieces to the site for considerably less money than the cost of renovating the building.

SENATOR HUMPHREY: Then does that mean that the building is going to be replaced for \$85,000 or less?

SENATOR DUPONT: Yes, it does, Senator. Less than \$85,000, more than likely.

SENATOR HUMPHREY: And then further on, Mr. President, the amount appropriated for earlier appropriated designing and constructing additional hanger facilities at Sky Haven Airport is being increased from \$400,000 to \$550,000.

SENATOR DUPONT: That is correct, Senator. One of the interesting aspects of Sky Haven Airport is that it was originally a dirt field and a pasture, and has been expanded over the years to be a fairly substantial airport. But the fact of the matter is, that it was built in a pasture, and such being the case, it is considered to be wetlands now. When it came time to place the hangars that were originally appropriated, a determination was made that a wetland study had to be done. Of the original \$400,000, almost \$50,000 of it has been expended to map the wetlands on the site. Meanwhile, 2-1/2 years have passed and these are special buildings as you know, being a pilot, that you can't just put a two car garage up to park an airplane in. There is a waiting list of approximately 30 people who want to put their planes in hangars at Sky Haven and there are no hangars avail-

able. So the latest estimate of cost is going to be in excess of the \$400,000, probably about \$50,000. But as I said, we have used \$50,000 just to find a place to put the hangar down that doesn't violate our own wetlands laws.

SENATOR HUMPHREY: Mr. President, these are going to be very expensive hangars in the end if you calculate all of the costs involved. The irony is that fewer than 20 miles away, there is a huge air force base which is hungering for tenants, with lots of hangar space. This course of action to increase these amounts, seems to me, unwise. Lots of airports have started as cow pastures and have grown up to be very useful airports and that is fine, but it is my view that Sky Haven is unique. As far as I know, the only airport owned and operated by the state which does not offer the community scheduled airline service. There certainly is a place for private airfields, but in my view, there is not a place, especially in times of economic distress, budgetary crisis, to be pouring more and more money into this one unique, special airport, which continues in its status, largely in my view, out of political influence. I think that we ought to privatize that airport, I think that we ought to sell off that airport, I think that we ought to let the private sector make decisions about how much money ought to be invested into that airport. I wonder how these bonds are going to be paid off by hangar fees. I don't see how that it can be done without driving out the tenants who would use those hangars. I think that budgetary shortfall, or I should say, the shortfall, to pay off these bonds, inevitably, is going to come out of all of the taxpayers of the state and not simply those who use that airport or the hangars as the case may be. But the bottom line, Mr. President, is in my view, that we see this pattern repeating, at least I have seen it repeating in two years. We keep packing money into Sky Haven Airport. I don't think that we ought to be doing that. I think that we ought to sell it off, we ought to privatize it and let the private sector make decisions about what ought to be done there in the way of capital improvements and let the private sector fund such capital improvements.

SENATOR BASS: Senator Humphrey, I appreciate your comments relative to the Sky Haven; however, in reading pages 35, 36 and 37, there is a whole series of bonding authorization here, \$10,000,000 for the University of New Hampshire, \$5,000,000 for the Department of Transportation, \$500,000 for the construction of a courthouse in Lebanon and Hanover, and also an appropriation of \$70,750 for the renovation of a taxiway for runway 36 at Lebanon airport. Now why is Sky Haven subject to such intense focus on your part and not all of these other appropriations?

SENATOR HUMPHREY: I would be happy to explain. I think the Senator missed my distinction with respect to airports. I said that Sky Haven is unique, it is the only airport in the state that is owned and operated by the state, which doesn't offer scheduled airline service and let's face it, it never will if ever indeed there will be scheduled service offered in that part of the state, it will be from Pease. With respect to courthouses and the other public institutions addressed in this bill, I am not advocating, nor do I know of anyone who advocates privatizing those functions. But, I do advocate privatizing the one airport in this state that does not and never will, offer scheduled airline services. It ought to be privatized. This continuing of funneling money, throwing good money after bad, and now a couple hundred more thousand dollars after addressing the wetlands issue. These are going to be very expensive hangars; and frankly, I don't think that it is justified.

SENATOR NELSON: Senator Hough, I just think that at this particular time, that it would be very beneficial to the body, if you would explain why the capital projects, what appears to be Capital Budget is in this, it might clarify some of these questions that are coming up about bonding issues. The Lebanon Airport, the University of New Hampshire. It just might be helpful to the rest of the body that wasn't on that committee when all of these decisions were made, if you wouldn't mind commenting on that?

SENATOR HOUGH: The position on the bonding for the University System is to take an immediate action to upgrade and address the deferred maintenance of the buildings that we have bought and payed for. You will see that that language is specific in that it addressess the fire life safety codes and . . . let me see the pages that you are on, Mary, well you can read it right off. But the point is, that we have an investment . . .

SENATOR NELSON: I would like to rephrase the question.

SENATOR HOUGH: Okay.

SENATOR NELSON: I would like to perhaps understand, why the capital projects are in the operating budget and it might clarify it for some of the people in the room. Why there is so many capital projects in an operating budget?

SENATOR HOUGH: Well, this is not the operating budget.

SENATOR NELSON: Sorry, I meant the supplemental budget.

SENATOR HOUGH: This is the so-called trailer bill, if you will. This is the bill that has a number of pieces that are bonded, that will go in concert with 1025 so that we can structure in the conference, a



package that we can move forward with for the balance of the biennium. Obviously, as you appreciate that any one of these subjects could be handled alone. There is not in the second year of a biennium, a comprehensive Capital Budget bill as there is in the first year, and these subjects as they appear here, lend strength to the whole.

SENATOR NELSON: Thank you for that clarification.

SENATOR COLANTUONO: Senator Hough, can you explain the change that appears to be made in the rainy day fund language and what that means for the future, page 33?

SENATOR HOUGH: I think I answered that question already.

SENATOR COLANTUONO: Okay, I guess you did. I guess some people weren't listening. Maybe again, you could indulge us?

SENATOR HOUGH: As you recognized the revenue stabilization statute as it presently exists, would take the unexpended revenues at the end of the first year of the biennium and direct them into the revenue stabilization account. It would not make them available for the balance of the biennium, meaning the second year of the biennium. In as much as we have a biennial budget, historically, there have been plus or minuses at the end of the year, irregardless of the balance position of the two year budget. This is a more correct change in the revenue stabilization account.

SENATOR COLANTUONO: The analysis on page 38 says under P, says, "the bill suspends the operation of RSA 6-C:1, relative to debt management until July 1, 1995." I couldn't find that language, but can you explain what the debt management statute says and how we are changing that?

SENATOR HOUGH: I will defer to President Dupont.

SENATOR DUPONT: Senator Colantuono, the Treasurer's Office, the Governor's Office and a bunch of us have been looking at the issue of how we are going to deal with some of the debt that is going to be accumulated this year and the contingent debt that we are discussing. A couple of years ago we passed a piece of legislation that said that the state of New Hampshire shall not issue new debt any greater than 10 percent of the total general fund revenue for the previous year. What you have before you today, is a suspension of that piece of language until 1995. Because quite frankly, if you don't take action on this piece today, it is still going to need to be suspended, because of what is proposed out there right now in terms of adding additional debt. Those pieces include the James River Corporation piece for Berlin, the potential of \$40,000,000 of bonded autho-

rization for Pease Air Force Base, it includes some capital projects that are in the works that that is going to have to be accumulated for in the normal process. So basically, as a result of that, this piece is in there.

SENATOR COLANTUONO: So it is paragraph 36, is that correct, on page 37?

SENATOR DUPONT: That talks about the suspension.

SENATOR COLANTUONO: How will that effect the bond rating of the state of New Hampshire if this passes?

SENATOR DUPONT: Senator, at the present time there are questions that have been raised about bond counsel about existing debt issues that are already out there. So it is a necessity that it be suspended at the present time.

SENATOR COLANTUONO: If it is suspended, does that mean that we have the right to do unlimited borrowing?

SENATOR DUPONT: Senator, prior to the passage of this legislation, the legislature had the ability to bond whatever amount it so desired. At the time when this legislation was passed, it was anticipated that this would not present a problem for the state of New Hampshire. As you heard Senator Hough speak earlier, there are several issues because of our economic problems in our state that are going to require us to take action, that we did not anticipate when this was passed, such as James River, such as Pease Air Force Base, such as the fact that we are going to have the new federal highway act showering money on the state of New Hampshire, and we don't have resources to pay our 20 percent share. So it is necessary for us to take this action today if we want to continue ahead. All of the debt that we have accumulated, including, contingent debt, the Manchester Airport, Pease, the James River piece, is impacted by this provision.

SENATOR COLANTUONO: Assuming that we went up to 20 percent of our general fund revenues from the previous year, would that have an impact on the bond rating and the interest rates that we pay?

SENATOR DUPONT: I don't think that there is any question, Senator . . .

SENATOR COLANTUONO: What would it be?

SENATOR DUPONT: I would also tell you that what you are going to get back from bond counsel when some of you sit in this chamber next year, is that the state of New Hampshire's credit rating is going

to be impacted by the fact that we are going to have a \$340,000,000 deficit for the next budget. So we can stand here today and worry about what our bond rating is going to be as a result of trying to get our economy going again, but the bigger issue that looms is, how are you going to maintain your bond rating when you are going to have a \$340,000,000 shortfall, general fund shortfall in the next biennium.

SENATOR COLANTUONO: Senator Hough, with regard to the Hanover, Lebanon court piece. I attended the House Judiciary committee hearing on our court consolidation bill yesterday and I have to say that I don't think that there is going to be a Hanover, Lebanon court this year or anytime soon, unless we pass a separate bill. I think that that bill is going to lose in the House. If that happens, what will happen to this authorization?

SENATOR HOUGH: I will tell you that I would certainly hope that the court consolidation bill could move through the House as it did through the Senate. One of the areas where it is efficient and effective to consolidating the court is in Hanover, Lebanon that separates two courts within three miles. If that does not come to pass, there is an opportunity at this point in time, for the Department of Administrative Services to negotiate with the FDIC on a branch bank building of one of the defunct banks that have moved. There is no guarantee that this can come to pass, but there is an opportunity to acquire what would be, virtually, the ideal court facility and there is a 50 percent chance that the state can acquire this facility. Whether or not the big court consolidation bill passes, there is enough joint interest, if you will, with these two courts so that they could be consolidated. As you know, even if we passed the consolidation bill, consolidation would not happen, unless there were appropriate facilities available for the new unified court in these areas. So this is an attempt to take advantage of a window of opportunity in the real estate market. It may or may not come to pass, but it should be explored.

SENATOR COLANTUONO: Thank you.

SENATOR HEATH: Senator Dupont, the repeal of the bonding limitation and the suspension of a large portion of the rainy day fund legislation concerns me and my question to you is, ought not this body best move either towards funding what it will spend by enhanced revenues, which I don't support, but at least it is more legitimate, it seems to me, or not spend what it doesn't have, rather than start pushing like the federal government has, debt on future generations, and move those problems forward compounding and building interest and adding to the problems that will crop up that we don't know about yet?

SENATOR DUPONT: Senator, in reference to the rainy day fund, as you are aware, I supported putting in place a rainy day fund. I don't think that we ever anticipated at the time that when we did it, that we would find ourselves in the situation that we are in presently. I think that the intent of our budgetary actions on the floor of this body have been to have a balanced budget at the end of the biennium. When you have this language in place dealing with the revenue flow that we have as a result of the medicaid money, the rainy day fund legislation doesn't work the way that we need it to work. So by changing that language to biennium, we preserve the ability of having a balanced budget at the end of the biennium.

SENATOR HEATH: Senator, when you say balanced budget, are you being a little ingenuous, if you will, in suggesting that a budget is balanced even if you essentially borrowed all the revenues that you've spent? I mean is there no limit someplace in using the term 'balanced budget' when you are essentially just writing an IOU?

SENATOR DUPONT: Senator, I am talking about the general fund portion of our budget, the operating budget, which is being balanced by using medicaid monies. The money that you appropriated today to balance that budget as well as meet the needs of the people of our state who are looking for help from the state government, is a separate issue from the borrowing that is being done. Last year we did some borrowing to pay for sewer bonds to meet our portion of the sewer bonds, it disappointed me to have to do that, but the choice was not paying our bills and letting the communities hangout there and try to pay our share. Quite frankly, I don't think that we had any choice but to do what we did last year.

SENATOR HEATH: But is it paying our bills to borrow? I mean I just don't acquaint borrowing with paying bills?

SENATOR DUPONT: Senator, we are talking about two issues. You are talking about the operating budget, which pays to put the lights on, your mileage, my mileage, our salaries, our generous salaries in this body . . .

SENATOR HEATH: Generous mileage, too.

SENATOR DUPONT: Our Health and Human Services Department, our part of that spending is in the operating budget. If you are talking about the capital appropriations that this bill makes, then that is a different issue than the operating portion of the budget. We are not in here bonding money right now for the operating portion of our budget.

SENATOR HEATH: But you will confess that a portion of our borrowing in the regular budget and in the supplemental budget, has taken some pressure that ordinarily would not have been relieved from the operating budget?

SENATOR DUPONT: You would have to tell me what those specific sections are, Senator, because I guess I am not getting the drift of your point.

SENATOR PRESSLY: I had a question, but I think that it has been answered, it is a minor one. On the snowmaking, do I read that correctly, that the added appropriation is \$100,000?

SENATOR HOUGH: Yes.

SENATOR PRESSLY: Thank you.

SENATOR DUPONT: I appreciate the opportunity to be on the floor and address the body. I obviously am supportive of what Senate Finance has done. I want to speak a little about infrastructure. Senator Humphrey mentioned Sky Haven Airport, and that was the reason for my coming down on the floor; I would like to address that, seeing that it is in my district. I think that it is appropriate for me to do so. Senator Humphrey, first I am proud of the job that I have done for my district, and that includes the support of the infrastructure that exists in our state and in my district. Sky Haven wasn't acquired by the state of New Hampshire as a result of my actions. It was acquired a number of years earlier when the airport was put up for sale and people realized that there wouldn't be any airport in the seacoast region of our state, unless the state acquired it. During those years when Pease wasn't available for people of our state to use, much commerce went through Sky Haven. Davidson Rubber built a number of facilities and have used that airport to move their product in and out of the state. Harris Graphics in Dover, moves its executives in and out of that airport as well as rush orders that people depend on them to supply to keep commerce going in other parts of the state. So I don't want this body to have an impression that Sky Haven airport is a place for the weekend pilot. Because it served a valuable purpose at a time when there wasn't an airport in the seacoast area. Senator, we disagree on infrastructure. I think that it is an appropriate role for the state of New Hampshire to get involved in preserving an airport network in this state that serves our state. We are a tourist state. The ability for tourists to fly into Whitefield, even though there isn't any scheduled airport airline service there, is important. If we had used the test 30 years ago, that we wouldn't have airports in this state unless we had scheduled airlines, there wouldn't be a Manchester Airport or a Lebanon Airport or a Berlin

Airport or a Whitefield Airport, we would have no airport system in the state. When we talk about infrastructure, we are not just talking about roads, we are talking about water and sewer and airports and rail; and I know that that disagrees with you, Senator, but the fact of the matter is, that is what infrastructure is all about. The state of New Hampshire in the 1980's spent on a per capita basis, at a level that put us number 47 in the whole country in investment in our own infrastructure. That makes me very, very unhappy, because that infrastructure supports the private sector that all of us stand here and say that we want to support so greatly in our state. The infrastructure that supports job creation, the ability to move people in and out of our state. Quite frankly, we have to own up to the fact that if we don't invest in that, what you are going to have in New Hampshire is what you see outside the windows of this building today, and that quite frankly, is not acceptable to me. So I don't have a problem standing up here and defending Sky Haven, defending building hangars there that perhaps companies in our area will be able to use to house their airplanes, rather than flying them over to Sanford, Maine and parking them. Sky Haven is still going to have a role to play in our state, just as Berlin is, and Whitefield is, and it is not going to be for scheduled airlines, it is going to be for people who have business to do in our state. And quite frankly, it's an investment that I think that the state needs to make. I have stood on this floor in past years and supported investing in airports in all parts of the state and I am not disappointed or embarrassed at all to stand here and say that I think that that is an appropriate use of our money. Because if we don't invest in them, we lose them. We lost one in Conway that we will never have back; and there are other airports in this state that quite frankly, if the state has to get in and buy them to keep them open, then we ought to do it. It is public infrastructure, it is important for the prosperity of our state, and quite frankly, it is in my estimation, a good investment for our state and a good investment into the future. So I thank you, Mr. President, and I would urge my colleagues to vote for this bill, because I think it adequately addresses the needs of our state.

Committee amendment adopted.

Question is on third reading.

Recess.

Out of recess.

A roll call is requested by Senator Humphrey.

Seconded by Senator Heath.

The following Senators voted Yes: Oleson, W. King, Fraser, Hough, Dupont, Currier, Disnard, Roberge, Blaisdell, Bass, Pressly, McLane, Podles, J. King, St. Jean, Shaheen, Delahunty, Hollingworth, Cohen.

The following Senators voted No: Heath, Nelson, Colantuono, Humphrey.

Yeas 19

Nays 4

Ordered to third reading.

Senator Heath in opposition to HB 1026.

Recess.

Senator Dupont in the Chair.

### HOUSE MESSAGE

The House of Representatives has referred for Interim Study the following Bills sent down from the Senate:

**SB 412-FN-L**, relative to signage by nonprofit organizations in zoned commercial or industrial areas.

### HOUSE MESSAGE

The House of Representatives concurs with the Senate in its amendments to the following entitled House Bills sent down from the Senate:

**HB 585-FN**, recodifying the laws relative to emergency medical services.

**HB 1054-FN**, relative to the industrial development authority.

### HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bills sent down from the Senate:

**SB 303**, establishing a committee to study the various options available to fund and deliver medical benefits for state employees and relative to the funding methodology of the retirement system.

**SB 307-FN**, authorizing disclosure of certain information contained in the records of the department of revenue administration to the office of reimbursements, division of mental health and developmental services.

**SB 313**, relative to gender balance on boards and commissions.

**SB 356**, relative to quality assurance records in nursing homes and health maintenance organizations.

**SB 361**, relative to the impact fee laws.

**SB 388-L**, relative to preserving utility licenses on municipal and state discontinued highways.

### HOUSE MESSAGE

The House of Representatives refuses to concur with the Senate in the passage of the following entitled Bills sent down from the Senate:

**SB 401**, removing the exemption from jury service for physicians and surgeons.

**SB 459-FN**, limiting increases in electric rates.

### REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House Bill:

**HB 1442**, relative to a census of school age children.

**HB 338**, prohibiting the detention of minors in adult correctional facilities and jails.

**HB 410**, relative to alternatives to incarceration and requiring the commissioner of the department of safety to review and make legislative recommendations on the point system as it applies to habitual offenders.

**HB 1121**, authorizing contracting for the operation of the impaired pharmacist program and funding the program from annual license renewal fees.

**HB 1204**, requiring the director of motor vehicles to notify any seriously injured person when the director conducts a license revocation or suspension hearing regarding a motor vehicle accident involving a fatality or serious injury.

**HB 1210**, naming the Karner Blue butterfly the state butterfly.

**HB 1216**, allowing certain funds to be transferred to the new women's dormitory account at the New Hampshire technical institute.

**HB 1237**, revising statutory references to the New Hampshire Charitable Fund.

**HB 1282**, relative to the transfer of registration between owned and leased vehicles.

**HB 1316**, relative to hearings before the board of nursing.



**HB 1320**, extending the time for recording a foreclosure deed and affidavit after a foreclosure sale when such recording is prevented by order or stay of any court of law or the United States Bankruptcy Code.

**HB 1426**, authorizing water users registered and reporting their use to the division of water resources to continue such use for the 1992-93 biennium.

### RESOLUTION

Senator Delahunty moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that the bills ordered to third reading be read a third time by this resolution, all titles be the same as adopted and that they be passed at the present time; and that when we adjourn, we adjourned until Tuesday, March 31, 1992 at 1:00 p.m.

Adopted.

### RESOLUTION

Senator Currier moved that the business of the day being completed, the Senate now adjourn until Tuesday, March 31, 1992 at 1:00 p.m.

Adopted.

### ANNOUNCEMENTS

#### LATE SESSION

##### Third Reading and Final Passage

**HB 534-FN**, an act amending the habitual offender penalties to provide for special alternative incarceration.

**HB 783-FN**, an act relative to motor vehicle records and DWI convictions.

**HB 1025-A**, an act relative to budget adjustments for fiscal years 1992 and 1993.

**HB 1026**, an act relative to a companion bill to the supplemental budget.

**HB 1163**, an act relative to a public employee's right to require that a nonpublic session under the right-to-know law be open to the public.

**HB 1209**, an act establishing a committee to study the real estate valuation and revaluation process.

**HB 1240**, an act establishing a committee to study criteria and propose legislation concerning the secession of a portion of a municipality.

**HB 1359**, an act relative to the confidentiality of police personnel files in criminal cases.

**HB 1440-FN-L**, an act relative to preparation of master jury lists by the department of safety from drivers' licenses lists.

**HB 1499-FN**, an act relative to inter-track wagering and the conduct of simulcast racing.

Senator Currier moved to adjourn.

Adopted.

Adjournment.

## *March 31, 1992*

The Senate met at 1:00 p.m.

A quorum was present.

The prayer was offered by the Rev. Thomas Keenan, Senate Guest Chaplain.

These words are from a young Jewish student in the early forties in the Netherlands under Nazi occupation. Regularly, Jews were being rounded up to be sent to 'work camps'. With this danger growing stronger each day, she entered these words in her journal:

The Jasmine behind my house has been completely ruined by the rains and storms of the last few days, its white blossoms are floating about in muddy black pools on the low garage roof. But somewhere inside me the jasmine continues to blossom undisturbed, just as profusely and delicately as it ever did. And it spreads its scent round the House in which you dwell, O God. You can see, I look after you; I bring you not only my tears and my forebodings on this stormy, grey morning, I even bring you scented jasmine. And I shall bring you all the flowers I shall meet on my way, and truly there are many of those. I shall try to make you at home always. Even if I should be locked up in a narrow cell and a cloud should drift past my small barred window, then I shall bring you that cloud, O God, while there is still the strength in me to do so. I cannot promise you anything for tomorrow, but my intentions are good you can see.

*Lord, God, you know our comings and our goings; the good we try to do and the good from which we turn our eyes, in discouragement or with apprehension. Grant us your mercy and your wisdom to see the opportunity each day affords. Save us from the bondage of the past or the anxiety for the future. Simply the present day, the present hour, help us address what is before us; with fairness and balance. This we ask of you Lord, God, living and reigning now and forever. Amen*

Senator Nelson led the Pledge of Allegiance.

## INTRODUCTION OF GUESTS

### HOUSE MESSAGE

The House of Representatives has voted to lay on the table the following Bill sent down from the Senate:

**SB 306-FN-A**, allowing bonus payments in recognition of service during the Persian Gulf War and making an appropriation therefor.

## COMMITTEE REPORTS

**HB 285-A**, an act relative to constructing regional vocational centers and making an appropriation therefor. Capital Budget committee. Ought to Pass. Senator Oleson for the committee.

SENATOR OLESON: Mr. President and my colleagues, it is my pleasure today to introduce HB 285 which calls for a creation of another tech school in the state of New Hampshire, and it happens to be in the Peterborough district. I think in our past years we built our own in Berlin in 1965. At that time it was Governor King's prerogative to come up with what was known as a vocational center plan, where supposedly, over the years some 20 were suppose to be built in the state of New Hampshire. I happen to believe that even though every one of us, we hope that our sons and daughters might be doctors and lawyers and members of the clergy, an indian chief, but nevertheless, I kind of like to think that basically, our state of New Hampshire and the economy and the welfare of it, is going to be based primarily to a certain extent on our tech school, because these are the people who are trained and educated to run our factories and repair our turbines. And even in my district, at least when you come up and visit some of our fine restaurants, the fact without exception is that the chefs happen to have taken the course at our tech school in Berlin. I can't take up anymore of your time, we have a long agenda, but I will have to say in all sincerity, I don't know how the state of New Hampshire can spend money any better or anywhere, than to develop our tech school system.

SENATOR BASS: Mr. President, I rise in support of the committee motion of ought to pass. This is a center that would affect the districts of Senators Currier, Pressly, and myself. It is the last of the 18 Voc tech centers that were originally planned in 1976. As you may know, we funded originally, or funding at the present time, is around \$63,000,000; however, the current balance is around \$47,600,000, so the funding of this particular center would not constitute any new funding in excess of what was originally envisioned. This is an excel-

lent time to build a facility such as this. We have just finished doing some renovations on the middle school and the elementary schools in many of the towns, and the cost came in substantially lower than were planned. It is also important because we need to develop in New Hampshire a good skilled work force. It is one of our highest priorities as we have dealt with economic development. There is a lot of support for this in the 11 communities that are part of this district, and I urge the Senate's adoption of the committee report of ought to pass.

SENATOR DISNARD: I would like to just reiterate what Senator Bass just said. This was one of the original 20 schools so designated, and there is nothing new on this to come before us and everyone knew this at the beginning. Really a commitment was made by the state at that time.

SENATOR NELSON: As the Chairman who listened to this in Capital Budget, I would say that it was the best presentation in 10 years, bar none, concerning a dynamic program for education. Mr. Connoyer and the rest of those people in that part of the state deserve a loud applause. I think the deal here is, excuse the slang, that everyone should get over and see this program and see the kind of business partnership that they are talking about, education with the young and business. Thank you.

Adopted.

Question is on ordering to third reading.

A roll call was requested by Senator Nelson.

Seconded by Senator Bass.

The following Senators voted Yes: Oleson, W. King, Hough, Dupont, Currier, Disnard, Roberge, Blaisdell, Bass, Pressly, Nelson, Colantuono, McLane, Podles, J. King, Russman, Shaheen, Delahunty, Hollingworth, Cohen.

The following Senators voted No: Heath.

Senator Fraser excused for the day.

Yeas 20

Nays 1

Ordered to third reading.

**HB 1228-FN-L**, an act allowing a city, town or village district to grant waivers from the requirement of connection to the public sewer systems for properties with adequate alternative sewage disposal systems. Environment committee. Ought to Pass with Amendment. Senator W. King for the committee.

5572L

**Amendment to HB 1228-FN-LOCAL**

Amend the title of the bill by replacing it with the following:

**AN ACT**

allowing a city, town or village district to grant waivers from the requirement of connection to the public sewer system for properties with adequate alternate sewage disposal systems and allowing the town librarian to also serve as a selectman.

Amend the bill by replacing all after section 1 with the following:

2 Exception for Librarians. Amend RSA 669:7, I to read as follows:

I. No person shall at the same time hold any 2 of the following offices: selectman, treasurer, moderator, trustee of trust funds, collector of taxes, auditor and highway agent. No person shall at the same time hold any 2 of the following offices: town treasurer, moderator, trustee of trust funds, selectman and head of any police department on full-time duty. No person shall at the same time hold the offices of town treasurer and town clerk. No full-time town employee, **except for the town librarian**, shall at the same time hold the office of selectman. No official handling funds of a town shall at the same time hold the office of auditor. No selectman, moderator, town clerk or inspector of elections shall at the same time serve as a supervisor of the checklist. No selectman, town manager, school board member, full-time town, village district, school district or other associated agency employee or village district commissioner shall at the same time serve as a budget committee member-at-large under RSA 32.

3 Application. The provisions of section 2 shall apply to any election of selectmen held on or after March 1, 1992.

4 Effective Date. This act shall take effect upon its passage.

**AMENDED ANALYSIS**

This bill allows a locality to grant waivers from the requirement of connection to the public sewer if the property has an adequate alternative sewage disposal system which complies with applicable state and local regulations.

This bill also allows a town librarian who is a full-time town employee to hold the office of selectman at the same time. The provisions of this bill would apply to any election held on or after March 1, 1992.

SENATOR W. KING: The amendment that you see in the calendar, is the wrong amendment. It was . . . could we have a 30 second recess.

Recess.

Out of recess.

SENATOR W. KING: The amendment that you have in your calendar is the wrong amendment. It is an amendment that is under discussion within the committee, but for some reason it got put onto the bill instead of one that Senator Shaheen will offer as a floor amendment afterwards in the calendar. I am going to urge you to defeat the pending amendment, but you can expect to see it at some point a little later on. Please defeat this amendment, and Senator Shaheen will offer a floor amendment. That is the amendment that the committee wanted to put on the bill, intended to put on the bill, and then we can pass the bill.

SENATOR NELSON: Senator King, I didn't quite understand when you said, "defeat this amendment, but you will see it somewhere else"?

SENATOR W. KING: Well, what I am saying is that we are going to continue to discuss this issue, but we did not discuss that amendment and it was placed on the bill inadvertently. It was suppose to be the amendment that Senator Shaheen will be offering. If you would like to discuss that particular amendment, I would be happy to discuss it with you after the session.

SENATOR NELSON: What particular amendment?

SENATOR W. KING: The amendment that is in the calendar.

SENATOR NELSON: Oh. Okay. Thank you, Senator King.

Committee amendment failed.

SENATOR SHAHEEN: You are now being passed an amendment which I am offering as a floor amendment to 1228. What this amendment does, is it exempts the town of Durham on this one bond issue, from the requirement that was passed in the last session that they hold two public hearings, rather than just one, and hold a vote on bond issues within a certain period of time. Let me just explain a little bit. The town of Durham is applying for \$3,000,000 for a sewer bond. The money was in the Capital Budget last session, they held a public hearing, they went to a vote in December, the bond was passed by a 2/3 vote of the town. When they put it out to bond counsel last week, bond counsel discovered that we had changed the law in the inner room, and that they no longer qualified under the changes in the law. So all that this bill does, is exempt them on this

one bond issue, where they have already gone through all of the requirements before the law was changed, to allow them to go ahead and go forward, with their putting it out to bond. So I urge the Senate to pass the amendment.

Senator Shaheen offered a floor amendment.

**5564L**

**Floor Amendment to HB 1228-FN-LOCAL**

Amend the title of the bill by replacing it with the following:

**AN ACT**

allowing a city, town or village district to grant waivers from the requirement of connection to the public sewer systems for properties with adequate alternative sewage disposal systems, and authorizing the town of Durham to borrow for the purpose of making improvements to wastewater treatment facilities.

Amend the bill by replacing all after section 1 with the following:

2 Durham Appropriation. The vote of the town of Durham passed on December 17, 1991, appropriating and authorizing the borrowing of the sum of \$3,100,700 for the purpose of making improvements to wastewater treatment facilities and pumping stations is hereby validated, ratified and confirmed in all respects. No further proceedings by the town shall be required for the execution and issuance by the town treasurer and chairman of the town council on behalf of the town of bonds or notes or a loan agreement under this act and RSA 33.

3 Effective Date.

I. Section 2 of this act shall take effect upon its passage.

II. The remainder of this act shall take effect 60 days after its passage.

**AMENDED ANALYSIS**

This bill allows a locality to grant waivers from the requirement of connection to the public sewer if the property has an adequate alternative sewage disposal system which complies with applicable state and local regulations.

This bill also authorizes the town of Durham to borrow funds for the purpose of making improvements to wastewater treatment facilities.

Floor amendment adopted.

Ordered to third reading.

Recess.

Senator Delahunty in the Chair.

**HB 326-FN**, an act relative to disciplinary hearings before the pharmacy board. Executive Departments committee. Ought to Pass. Senator Colantuono for the committee.

SENATOR COLANTUONO: This bill is at the request of the Pharmacy Board. It basically updates language in their act to comply with other Licensing Board amendments that we have done for the other agencies. The House Bill came over, the testimony in committee was all positive, there was no controversial sections. So we recommend ought to pass as is.

Adopted.

Ordered to third reading.

**HB 446-FN**, an act relative to the board of registration in medicine and relative to the definition of psychologist. Executive Departments committee. Ought to Pass with Amendment. Senator Currier for the committee.

5514L

#### Amendment to HB 446-FN

Amend RSA 329:9, XV as inserted by section 2 of the bill by replacing it with the following:

XV. Administrative fines as authorized under RSA 329:17, VII(g).

SENATOR CURRIER: This bill is a result of a study committee that was conducted in the House. It basically is one of the bills that is relative to all of the various boards and trying to bring all of those various boards into line in terms of the same codified legislation. The bill also makes a technical change to the law relative to the definition of psychologist for hospital and medical service corporations. There is an amendment on page five of today's calendar that deals with the fines and authorizing fines for the Board under provisions of RSA 329:17. I urge the Senate's support of the committee's report of ought to pass with amendment.

SENATOR NELSON: Senator Currier, I didn't hear what you said about extending the licensure, extending the conditional licensure period from six to twelve months for out of the country or out of state. I was interested in the out of country: what is the rationale for that, we don't have enough doctors in this country?



SENATOR CURRIER: I can't pursue the answer to that question.

SENATOR NELSON: You can't answer it?

SENATOR CURRIER: No, I can't, not specifically.

SENATOR NELSON: Is there anyone on the committee that would care to answer that part of the bill?

SENATOR DELAHUNTY (In the Chair): I see no volunteers, Senator.

Recess.

Out of recess.

SENATOR CURRIER: It solves a problem that was alluded to with regard to application in extending the period for investigation of the licensure from six months to twelve months.

SENATOR NELSON: Thank you, Senator Currier. Thank you, Mr. President.

Committee amendment adopted.

Ordered to third reading.

**HB 714-FN**, an act relative to a life saver I.D. program. Executive Departments committee. Ought to Pass. Senator Currier for the committee.

SENATOR CURRIER: This bill is basically a voluntary program dealing with the issuance of stickers for the purpose of emergency identification. During testimony on this bill, it was alluded to that a number of youngsters who use skateboards and other types of vehicles as a means of propelling themselves around the streets at which time that they get injured by getting stricken by a motor vehicle. Part of this program is to identify that skateboard as being owned and operated by a particular individual, so that in terms of medical treatment and identification purposes, that the parents and so fourth can be notified. It is a voluntary program that basically has a matching grants provision, so that if in fact, that amount of matching money is not matched, then the program does not happen. It is basically a \$5,000 program that has a \$2,500 match for it.

SENATOR SHAHEEN: Senator Currier, how big a problem is this?

SENATOR CURRIER: It is becoming more and more of a problem as the population grows. Representative Lefebvre from Hillsborough, district #29, in the areas of larger population said that it is becoming a problem. This is a kind of a public service oriented type of program, where the Lions Club and the Rotary Clubs get together with the local public safety officials in terms of identifying

individuals that use that type of equipment; for example, that is used in backpacking and hiking in the mountains and so forth for identifying people. Because there has in fact been specific problems sited and this voluntary program would be developed to try and help deal with that particular problem.

**SENATOR SHAHEEN:** Does this assume an education program to go along with this, and who is going to conduct that?

**SENATOR CURIER:** Yes it does. It is part of the overall program. What the discussion was, is that tying these into some of the boats, for example, canoes are not currently licensed or registered. So what they were talking about doing is part of the fee structure for the outlet of this, being the stores that also administer these licenses to register snowmobiles, ATV's and boat registrations and so forth. So there would be brochures and other things available as part of the public safety, plus the encouragement of the local public service organizations within the various communities. So it is kind of a joint venture between the public sector and the public sector.

Adopted.

Ordered to third reading.

**HB 1119**, an act relative to the New Hampshire automated information system board. Executive Departments committee. Ought to Pass. Senator J. King for the committee.

**SENATOR J. KING:** This bill deals with the automated data processing, which is a division within the library at the present time. There will be no expansion of people, no more dollars involved. Basically, it is a housekeeping bill. It changes a name from automated data processing to New Hampshire Automative System's Board. It also allows the board, which they are going to increase and allow it to make its rules by which the local library systems can participate in this. It will also allow the board to set standards by which their library network, a computer network of the local libraries and the state libraries should be set up. I would like to let you know that at the present time, and this has been going on for about ten years, over 210 libraries statewide, academic, and public and so forth are participating, and we have over 1.3 million titles represented in the data base. It is a good way of saving money, and I suggest that you pass HB 1119.

Adopted.

Ordered to third reading.

**HB 1315-L**, an act amending RSA 154 relative to firewards and fire-fighters, exempting fire investigators from having law enforcement backgrounds, extending the committee studying fire laws, and ex-

tending the state historic flag committee and making an appropriation to such committee. Executive Departments committee. Ought to Pass with Amendment. Senator Pressly for the committee.

5508L

### **Amendment to HB 1315-LOCAL**

Amend RSA 154:7-a, II and III as inserted by section 8 of the bill by replacing them with the following:

II. The fire officer in charge or his designee shall investigate the cause and origin of fires, including the taking of evidence relative to the cause and origin of fires, except as enumerated elsewhere by statute.

III.(a) Upon determination by the fire officer in charge or his designee that a fire is of suspicious or incendiary origin, determination of which shall include information received from the police officer in charge, the police officer in charge may:

- (1) Conduct a criminal investigation.
- (2) Restrict access to the scene.
- (3) Collect and secure criminal evidence.
- (4) Gather investigative information.

(b) The powers enumerated under subparagraph III(a) shall only be subject to the authority of the fire officer in charge to extinguish fire, protect against immediate life hazard, and treat and stabilize the sick or injured.

SENATOR PRESSLY: The analysis explains it very explicitly and very clearly. This is the result of a committee. Our committee reviewed it very carefully and felt that every single change and every aspect of it made sense and was worthwhile. A particular interest in an area of it that we discussed at length, had to do with the relationship with firefighters and the police department when there is a reason for the two departments to interact with each other. Both groups felt that this made the relationship much clearer, and that it would certainly enhance their functions in responding to, in that situation, suspicious fires. Also, as you can see with the historic flag, that this piece of legislation has been used to make some changes to other types of legislation. I would be happy to try and answer any questions that you might have. It is recommended by the people who will be accountable for this.

Committee amendment adopted.

Ordered to third reading.

**HB 1318-FN**, an act repealing a provision of the business corporations act concerning application for reinstatement of charters and relative to the annual reports of beverage vendors and beverage ven-

dor importers. Executive Departments committee. Ought to Pass with Amendment. Senator Pressly for the committee.

5509L

### **Amendment to HB 1318-FN**

Amend the title of the bill by replacing it with the following:

#### **AN ACT**

repealing a provision of the business corporations act concerning application for reinstatement of charters, relative to the annual reports of beverage vendors and beverage vendor importers, and reinstating the charter of Rosetta Stone Associates, Inc.

Amend the bill by replacing section 3 with the following:

3 Reinstatement of Rosetta Stone Associates, Inc. The charter of Rosetta Stone Associates, Inc. of Nashua, New Hampshire, incorporated on March 27, 1974, was forfeited on November 3, 1986, under RSA 293-A:95, I(a). Upon payment of any fees in arrears, a reinstatement fee of \$100, an application fee of \$35, the filing of any annual returns required by law, and upon obtaining a certificate of good standing from the New Hampshire department of revenue administration, Rosetta Stone Associates, Inc. shall be reinstated for all purposes as a New Hampshire corporation, and this reinstatement shall be retroactive to November 3, 1986.

4 Effective Date. This act shall take effect 60 days after its passage.

#### **AMENDED ANALYSIS**

This bill repeals an applicability section of the business corporations law that conflicts with other sections of the law.

The bill removes an exemption for beverage vendors and beverage vendor importers concerning the filing of annual reports.

This bill also reinstates the corporate charter of Rosetta Stone Associates, Inc. of Nashua, New Hampshire.

SENATOR PRESSLY: This is a piece of legislation that comes up almost every session, and it has to do with some details for the corporate division of the Secretary of State's Office. Mr. Tom Connolly was instrumental in its creation. There is an amendment, and the reason for the amendment is that there is a corporation in Nashua that for logical and understandable reasons, did allow their corporate status to lapse. Instead of declaring bankruptcy, this individual is able to pay the debts, and is willing to step forth and be rein-

stated, and the business is doing quite well. So in many ways, it is a happy amendment. I strongly recommend that you adopt the amendment and then the full bill.

SENATOR BASS: Senator Pressly, my question involves the corporate charter of the Rosetta Stone Company. Having served on Public Affairs for four years, most of these corporate charter questions were considered by this committee. Generally what the committee requires is a complete explanation for the record by the president or the person responsible for making this. Not only for the protection of us as legislators, but the state. Because in many instances when you are reinstating a corporate charter for a profit company, it might have to do with some pending litigation or something associated with that, and it might not be in the best interest of the state to become a party to that process. I was wondering if for the record, if you could tell the Senate, the stories that you understand, and the reason the Rosetta Company did not reinstate their charter; and what the effect will be if the passage of this amendment on their corporate position and if it would affect any other aspect of any other action that may be pending or they may be contemplating?

SENATOR PRESSLY: Thank you, Senator Bass, I appreciate the question. I did not give the explanation, because some of it was of a personal nature, but since you have . . . for the applicant, but since you have inquired, I shall. The corporation is a company that does translations and five or six ago, their business sort of dropped off. The gentleman's wife, he owned it individually, the gentleman's wife became ill, and evidently died of cancer. A lot of it was just due to not using it. He now realizes that business has picked up, which I think is quite encouraging. As we know there has been much, much, more interest on international businesses, and the need for language translation has increased and he is pleased to find that the business is now more marketable. He made the request through the Secretary of State's Office. As far as I understand, they approved and recommended this bill, that it be attached to.

SENATOR BASS: Senator Pressly, why didn't the owners of this company simply reincorporate and pay a \$50 fee and establish the trade name? Why are they going through this process of having to pay all of these back fees, which would be substantially more expensive, if the only reason for their reincorporation was that they neglected to do it before? Because is it not true that they could reestablish exactly the same name and everything for \$50 and no legislation?

SENATOR PRESSLY: Thank you, Senator Bass. My understanding, that this is what the applicant chose to do. He was in consulta-

tion with the Secretary of State's Office relative to that. I also served on the committee that you referenced at one time. If you recall, it wasn't too many years ago, that we had many of these. We would have all day hearings and we had many people come before the body to get a special exception. Because it seemed a little bit foolish, we did create legislation so that you had a certain time span. In this case, the time span is longer so that this particular corporation did not qualify. I understand that now instead of having many of these every year, we are down to about one a year. I am comfortable with it being passed at this time. If the body feels that you have some specific questions or more questions that you would like to ask, I would be happy to rerefer it or table it or whatever you would like. I feel very confident that it is a very worthwhile thing to do. Thank you.

SENATOR BASS: I am sorry to belabor this, Senator Pressly. Did the Secretary of State's Office make a statement for the permanent record that they supported a public hearing or anywhere, do we have this in writing that they have endorsed this reinstatement? This didn't go to a public hearing, I assume, this amendment?

SENATOR PRESSLY: Oh sure it did.

SENATOR BASS: Oh, it did?

SENATOR PRESSLY: Yes.

SENATOR BASS: Oh. So my question to you then is, did the Secretary of State's Office appear in support of this amendment then?

SENATOR PRESSLY: In answer to your question, I am not 100 percent certain if they did. They were there for the hearing when this gentleman approached me concerning his corporation. I referred him to the Secretary of State's Office, they had the legislation prepared at my request. So I am very comfortable. There was a public hearing, the gentleman, he also is employed at someplace else. So he has a constant flow of income now. He was there and so was Mr. Connolly. So I am very comfortable that they all know that it is happening, and it has been recommended by all parties.

Committee amendment adopted.

Ordered to third reading.

**HB 545**, an act reapportioning the executive council districts. Internal Affairs committee. Ought to Pass. Senator Roberge for the committee.

SENATOR ROBERGE: Mr. President and members of the Senate, HB 545 has to do with reapportioning the executive council districts. It received the majority approval from the councilors themselves. I

have written documentation to that, if someone would like to see it. I move ought to pass. The point was to move the district as little as possible. I think that we can all agree to that.

Adopted.

Ordered to third reading.

**HB 569**, an act to reapportion county commissioner districts. Internal Affairs committee. Ought to Pass. Senator Roberge for the committee.

**SENATOR ROBERGE:** Mr. President and members of the Senate, HB 569 has to do with reapportionment of county commissioner districts. There was only point in the state where there was any question about where to divide, and that was between either Manchester and Goffstown or Bedford and Goffstown. The decision was to put Bedford with Manchester and it is my understanding, that the county commissioner's agree with that decision.

**SENATOR NELSON:** Senator Roberge, on Hillsborough county, I noticed that you have now put Nashua, Hollis, Hudson and Pelham, when originally, Nashua was by itself. What was the reason? Were the county commissioners from down there supportive, and what was the rationale for doing this?

**SENATOR ROBERGE:** I did not go to the public hearing in the House and this is a House Bill. It is my understanding, from the two House members, Garret Cowenhoven and Carol Holden, that this was agreed on by the parties involved. I do have the committee notes and I would be happy to share them with you.

**SENATOR NELSON:** Before or after I vote?

**SENATOR ROBERGE:** Right now.

**SENATOR NELSON:** Thank you, Senator Roberge. I would like to see those notes if I may.

Recess.

Out of recess.

Question is on the motion of ought to pass.

Adopted.

Ordered to third reading.

**HCR 26**, an act urging the New Hampshire legislature and the New Hampshire Congressional delegation to discourage certain Air Force testing of F-16 fighter aircraft in New Hampshire airspace. Internal Affairs committee. Ought to Pass with Amendment. Senator Roberge for the committee.

5556L

**Amendment to HCR 26**

Amend the title of the resolution by replacing it with the following:

**A RESOLUTION**

urging the New Hampshire legislature and the New Hampshire Congressional delegation to discourage certain Air National Guard testing of F-16 fighter aircraft in New Hampshire airspace.

Amend the resolution by replacing all after the resolving clause with the following:

Whereas, the United State Air National Guard is preparing to upgrade the current A-10 fleet used by air national guard units based in the northeast to F-16 aircraft; and

Whereas, the Air National Guard has announced the preparation of an environmental impact statement for the conversion of the A-10 aircraft to F-16 aircraft which involves modification of the special use airspace in New Hampshire and in the northeast; and

Whereas, the new environmental impact statement and modifications in airspace use are necessary to accommodate the F-16 aircraft because the F-16 aircraft is a much more sophisticated aircraft capable of operating at speeds up to 615 mph during training flights as low as 100 feet above ground level; and

Whereas, such training flights in the Yankee Two Military Operations Area which includes New Hampshire will be conducted from sunrise to sunset 7 days a week, for a total of approximately 3,792 flights per year; and approximately 15 flights per day at such high speeds and low ground levels; and

Whereas, this proposal by the United States Air National Guard, if implemented, would adversely affect the economy, tourism, the environment, and the everyday lives of people in New Hampshire; now, therefore be it

Resolved by the House of Representatives and the Senate in General Court convened:

That the New Hampshire House of Representatives and the New Hampshire Senate oppose the changes that are proposed in the Yankee Two Military Operations Area to accommodate F-16 training exercises, and that the New Hampshire Congressional delegation be respectfully urged to work with the United States Air National Guard to define a full range of alternatives for the special use of airspace in the Military Operations Area which includes New Hampshire; and



That copies of this resolution signed by the speaker of the house and the president of the senate, be transmitted by the house clerk to each member of the New Hampshire Congressional delegation.

SENATOR ROBERGE: Mr. President and members of the Senate, the amendment had to do with a typo that had U.S. Air Force. The intention was, the Air National Guard. This is a House Concurrent Resolution just urging the testing of this particular aircraft in certain parts of the state. We had testimony that it would be damaging to the Old Man of the Mountain. One hundred feet is not very far off the ground. The residents wanted some kind of say where the testing would take place, not to ban the testing, but just to have some say to encourage the testing of this aircraft in a more suitable, perhaps less populated part of the state.

SENATOR DISNARD: Mr. Chairman and members of the committee, I urge that we defeat this bill, this resolution. It doesn't take long to forget, does it? A few years ago or less than a year ago, we were very pleased with the training that our planes and troops and Air Force, Marines and Sailors had when we went over to the east. It wasn't too long ago that we were very pleased with the training of our Air Force in Vietnam and Korea had. I think that we ought to leave this to the National Guard. They certainly have the ability to determine where it would be detrimental to our area. I can tell you from experience, that the jets in World War II, the planes, the pilots, the crews, need as much all terrain training as they can get. Once again, how soon do we forget.

SENATOR SHAHEEN: Senator Roberge, can you tell me what the difference is between the amendment that appears in . . . maybe you said it already and I missed it, and the original?

SENATOR ROBERGE: Yes. It was originally printed "The U.S. Air Force" and they meant the Air National Guard.

SENATOR SHAHEEN: Okay, thank you.

SENATOR J. KING: Senator Roberge, where would these people do their practicing now if this was eliminated?

SENATOR ROBERGE: It is just suggesting that they pay attention to the more populous areas when they are thinking about testing it. That is a very important site, the Old Man. Maine has passed similar legislation, just to encourage, Senator, not to make any demands on our military. Not that we could, with a House Concurrent Resolution anyway.

SENATOR J. KING: Would you believe, Senator, that this is just like the Nuclear power plant, that we built a plant down there, but

we don't want the sludge anyplace. We like the Air Force around, but we don't want them making noise in our state? Would you believe that?

SENATOR ROBERGE: I believe, but I don't agree.

SENATOR BASS: Senator Disnard, you mentioned that we were all favoring the Persian Gulf War and so forth last year and how quickly we forget. This is an informational question. Did the Air National Guard in New Hampshire fly any F-16 aircraft in the Persian Gulf War?

SENATOR DISNARD: I can't answer that, but the Air National Guard in New England trains over here and they probably did, but I couldn't tell you that. I am just saying that we have to keep our Air Force trained. This doesn't say what I just heard the previous speaker indicate. I read this as they can't fly at certain heights, certain positions. If you read the amendment on page six.

Committee amendment adopted.

Ordered to third reading.

**HB 1107-L**, an act requiring that tax collectors provide property owners with notices of arrearages for property taxes. Public Affairs committee.

Ought to Pass. Senator Nelson for the committee.

SENATOR NELSON: This bill does just what it says it is going to do if you read the analysis. It is going to require tax collectors to provide the property owner with the summary of all uncollected and unredeemed property taxes on his property. It also puts into law, the practice that is already in place. Cities and towns are already doing this, we just put it into the law. The controller from Nashua, for example, testified in favor of it and said that it would not add any cost to the local towns and cities.

Adopted.

Ordered to third reading.

**HB 1341-FN-L**, an act clarifying the terms "subsequent tax" and "registered" and "certified" mail for purposes of certain property tax laws. Public Affairs committee. Ought to Pass. Senator Bass for the committee.

SENATOR BASS: Mr. President, this is another bill like the previous one, it was requested by DRA. Essentially, to be sure that the law states what is the practice currently. The clarification of the definition of subsequent taxes is housekeeping. The change from registered mail to certified mail, essentially, reduces the cost of these

notices from \$4 to \$5 apiece to \$2.39 apiece. The only difference between registered and certified mail is that registered mail is insured for a value, and a notice does not really have a monetary value, you couldn't collect on the insurance anyway. So this will save the towns some money. I urge the Senate's adoption of the committee report of ought to pass.

Adopted.

Ordered to third reading.

**HB 1351**, an act creating a committee to review the laws governing tax-exempt property and to study the concept of and criteria for payment in lieu of taxes by tax-exempt properties in response to HBI 2 of the 1991 session. Public Affairs committee. Ought to Pass with Amendment. Senator Nelson for the committee.

**5560L**

### **Amendment to HB 1351**

Amend paragraph I of section 1 of the bill by inserting after subparagraph (k) the following new subparagraph:

(l) One representative of the New Hampshire Association of Commerce and Industry, Inc., appointed by such association.

SENATOR NELSON: Again, this bill does just what the analysis says. It creates a committee to review the laws governing tax-exempt property. Also, if you look in the calendar on page seven, you will see that we have added one more member to the committee. It is strictly a study bill.

SENATOR DISNARD: Is this another bill to review current use law?

SENATOR NELSON: No, not current use.

SENATOR DISNARD: That is exempt?

SENATOR NELSON: Right.

Committee amendment adopted.

Ordered to third reading.

**HB 503**, an act relative to recovery of medical assistance payments. Public Institutions, Health and Human Services committee. Ought to Pass. Senator Bass for the committee.

SENATOR BASS: Mr. President, this bill was requested by the Attorney General's Office in an effort to clarify the process whereby they can recover amounts expended in medical assistance to the maximum extent possible from a decedents estate. The committee,

after review, agreed that this is a good direction to move in, and urges the Senate's adoption of ought to pass.

Adopted.

Ordered to third reading.

**HB 562**, an act extending the surgical authority of podiatrists. Public Institutions, Health and Human Services committee. Ought to Pass. Senator J. King for the committee.

SENATOR J. KING: This bill, two years ago, I guess, came up when they were questioning where the podiatrist had his right, and where to cut, and where to do the surgical treatment. This bill spells out, that allowable surgical in the health care facility shall be determined by that health care facility credential committee. So they have power of what they can and can't do surgically within the health care facility. I suggest that it be passed. Thank you.

Adopted.

Ordered to third reading.

**HB 726-FN-A**, an act relative to fees charged for vital records. Public Institutions, Health and Human Services committee. Ought to Pass. Senator J. King for the committee.

SENATOR J. KING: I requested that we table this bill for the specific reasons that there are some questions that were asked to me earlier, relative to the distribution of the fees. Therefore, I ask that we table the bill until next Thursday. Thank you.

### LAID ON THE TABLE

Senator J. King moved to have HB 726-FN-A an act relative to fees charged for vital records laid on the table.

Adopted.

HB 726-FN-A is laid on the table.

**HB 1152**, an act authorizing the office of child support enforcement services, a dependent child or his parent or guardian to receive directly from a health insurer a certificate of insurance covering any dependent child. Public Institutions, Health and Human Services committee. Ought to Pass. Senator McLane for the committee.

SENATOR MCLANE: There was no opposition to this bill. It is quite straightforward. If there is a court order in a divorce case saying that one or other of the parents pay for the insurance of a child, it would allow the custodial parent of the child to inquire of the insurance company a certificate on insurance so they can know what

is insured. Even Blue Cross Blue Shield felt that this would probably help them because they do get calls from parents wanting to see the child's health care coverage. They have felt because they didn't have any statutory right to give this information, that they should not give this information.

Adopted.

Ordered to third reading.

**HB 1207**, an act exempting hospice houses from certificate of need review. Public Institutions, Health and Human Services committee. Ought to Pass. Senator Bass for the committee.

SENATOR BASS: Mr. President, this bill exempts hospice houses from certificate of need review, and it also defines what a hospice house is. Currently, there are no hospice houses in New Hampshire. There is one in Vermont, and I believe one in Massachusetts. Essentially what they are is, specific places where individuals who are dying can go for care and comfort and so forth. It really isn't a nursing home or a hospital. Therefore, the committee felt that it was legitimate to exempt these facilities from the certificate of need process. No portion of a hospice house is subject to medicaid, so therefore, the insurance company and medicaid should not, and did not, have a concern with this. The committee urges your adoption of ought to pass.

SENATOR PRESSLY: Senator Bass, first a statement and then a question. I know the concept of hospice is a very valuable one and one that we will probably see growing as the need grows and the concept of holistic and total care, and also societies different approach to the process of dying. What harm does it have that they go through this certificate of need? My question is really, why not have it? It seems to me, that it is an industry that is likely to come to the area and it could easily grow. What harm is there that it also go through the certificate of need procedure?

SENATOR PRESSLY: That is a good question. The certificate of need process is many things. Perhaps the most important of which, is a mechanism whereby the cost of medical care can be kept down, especially as it relates to insurance premiums and medicaid and medicare. The purpose of the certificate of need is to make sure that we don't build too many facilities where there is no demand. A hospice house is not a hospital or a nursing home, and you cannot apply for funding for subsidies in order to be there; so therefore, the purpose of the certificate of need is really not there. And in fact, if you

had it, the chances are that it would greatly increase the cost to people who are staying in these facilities and they wouldn't take advantage of them. They are essentially no more than, not hotels, but they are not technical at all, they are places that you get emotional and very basic palliative assistance. The certificate of need process would really not help public policy in any fashion.

Adopted.

Ordered to third reading.

**HB 1414-FN-A**, an act relative to the medicaid plan to enhance the funding of services for children and families and making an appropriation therefor. Public Institutions, Health and Human Services committee. Ought to Pass. Senator Oleson for the committee.

SENATOR OLESON: Mr. President, on HB 1414, what it more or less boils down to is, trying to set up a committee in the Health and Welfare Department to examine what funding that the state received more or less in child abuse programs under the medicaid program. The state of Maine, the way that they worked it and we more or less took the lead. The way that they worked it, they hired an outside consultant to come in at a good hundreds of thousands of dollars and they found out that there were places that the state legitimately, under the law, could recover some 20 million dollars. We don't expect to maybe earn that much, but what we would like to do to probably examine certain programs and find out if we might be eligible to a certain extent, which they are quite sure that they are. This money will be used more or less in-house, I believe, it might be paying overtime to hire certain people to do this so that the state of New Hampshire could legally, under the law, recover what money is due to them under several federal programs in this area. Thank you very much.

Adopted.

Referred to finance (Rule #24).

**HB 1144**, an act relative to the examination of school bus operators. Transportation committee. Ought to Pass. Senator Currier for the committee.

SENATOR CARRIER: This bill is an extension of the public safety provisions of the school bus physical examination for school bus drivers. The bill requires school bus operators to have a physical examination before they will be able to operate a school bus that meets the federal guidelines, which would be valid for a two year period. In addition, the school bus operators who are 70 years of age or older will be required to have an annual physical prior to the beginning of

the school year in the operation of the school bus. The bill was at the request of the Department of Education and everyone appeared in favor of the bill.

SENATOR DISNARD: Senator Currier, do I read this, I hope that I am mistaken. Prior to age 70, once a bus driver receives his or her examination, does that mean that they never have to take another one or periodic health examination?

SENATOR CURRIER: What it means, is that if they are required to take a physical examination every two years, then someone who is 70 years or older would be required to take an annual physical. This is to try and bring the standard for school bus drivers into line with the Department of Transportation standards, relative to the operation with the trucking industry and the whole motor vehicle safety provision.

SENATOR DISNARD: Would this allow a school bus operator or a supervisor or a school superintendent, to require a physical less than a two year period if they have a reason to believe a person has a health problem?

SENATOR CURRIER: It is my understanding, that they have to have a certificate of this medical examination, and it is satisfactorily completing that, in order to get the license, the school bus drivers license in terms of renewal. So if there is a problem with somebody's health, they may not in fact, meet the standard. Annual physicals, and physicals every two years, would actually be a situation where they could monitor someone who had in fact, a physical problem.

SENATOR DISNARD: In other words, Senator, if I am a school superintendent and I suspect one of my drivers or some driver of a vehicle that transports students under my supervision, and I suspect that they have a problem, will this prohibit me from insisting that they have a health examination in less than a two year period?

SENATOR CURRIER: No, it would not. You would be able to ask for that physical, including drug testing, under other provisions of the state law.

SENATOR BASS: Senator Currier, what is the current standard for physicals for bus drivers?

SENATOR CURRIER: Good question, I am not sure. Senator Oleson or Senator Heath, can you answer it?

SENATOR OLESON: At the present time, as I understand it, maybe if you have a chum on the school board, you might get the job if you want it. There doesn't seem to be many restrictions on hiring in this area. But what this does in my mind, and the committee's

mind, was that a school bus driver, he or she is in charge of many children. In my mind, they are the most precious commodities that we have and we certainly should have every reason to believe that whoever is in charge of the children, are qualified to do what is expected of them. This is what I mean, anybody who is put in charge of children certainly as a bus driver, certainly should have a physical examination.

SENATOR BASS: Senator Currier, assuming perhaps that there are no requirements at all for physical examinations, and I don't know if that is the case or not, but assuming that we are establishing a new requirement, I noticed that the language says, "that the town or city governing body which pays for such transportation, shall require that such person shall submit a certificate, signed by a licensed physician." Do you see this as in anyway requiring that the supervisor of the units finance a cost which they are not already responsible for? In other words, an article #28-A question? I guess, I would add to a follow up to that, is it possible that there would be a secondary problem which might relate to them having to hire lots of new drivers because the requirements of 49 CFR 391.41-391.49 and so forth, were more stringent than they already have, if there are existing laws?

SENATOR CURRIER: Well that is a multi-part question. The first part of the question regarding a mandate, it says that the governing body which pays for such transportation, shall require of such person, shall submit . . . it is adding a requirement for the person providing the contractual service for the bus service. So it is placing a burden on them, not the local governing board, as I understand it. If it was a 28-A question, I wouldn't have supported the bill in the beginning. With regard to the physical condition of the drivers in accordance with the requirements of federal standard, for example, truck drivers have to go through a rigid drug testing and log keeping and so forth. This is to try to bring that standard up there to our school bus drivers. And in fact, it might be an additional burden to the bus companies, and it ultimately might be an additional cost to the local communities, because they are going to have to possibly hire additional drivers, if they don't meet the medical standard.

SENATOR PODLES: Senator Currier, this every two year deal, is this in the current law or is this new?

SENATOR CURRIER: That is what I am trying to determine.

SENATOR PODLES: Can we just table this?



SENATOR CURRIER: Don't table it. Just give me a minute.

Recess.

Out of recess.

SENATOR CURRIER: This is covered under the . . . in the provisional law it says that notwithstanding the provisions of RSA 200:36 and 200:36C is rulemaking authority. These are all new provisions that try and strengthen up the public safety aspect of the school bus operations. Right now, as I understand it, they get a license to be a school bus operator, they take a physical and then they don't take another one. So this would require that they take it every two years and then annually after age 70.

Adopted.

Ordered to third reading.

**HB 1164**, an act relative to seaplanes operating on bodies of water in New Hampshire. Transportation committee. Ought to Pass with Amendment. Senator Heath for the committee.

**5529L**

#### **Amendment to HB 1164**

Amend RSA 270:13-a as inserted by section 3 of the bill by replacing it with the following:

270:13-a Operation of Seaplanes or Helicopters on Public Waters.

I. Any seaplane or any helicopter on floats which lands on public waters shall be exempt from all laws and rules concerning the operation of boats for the purpose of landing and taking off from such public waters.

II. Any seaplane or any helicopter on floats shall exercise due caution and respect for the rights and safety of any person or boat using the public waters.

SENATOR HEATH: This bill allows noisy seaplanes on Newfound Lake and other places, and it clarifies the law so that seaplanes in the process of taking off and in the process of landing, are not constricted by the speed limits and the other laws that pertain to motor boats. They become a motor boat when they are not in the process of taking off or landing. Taking off at 40 miles an hour might be difficult on some ponds.

SENATOR MCLANE: Senator Heath, I thought you had me all quiet, but I just want you to say for the record, I know that the seaplane people have come in again, and again, and again, to our boat hearings; and tried to differentiate between a seaplane and a boat, and whether they would be subject to the same laws, particu-

larly the law about headway speed within 100 feet of shore. What is the process that the aeronautics division has for keeping a boat from practicing takeoffs and landings for an extended period of time on some lakes?

SENATOR HEATH: I think that the law is that they can do that until they hit a few loons and then they probably have to stop . . . I am just kidding, I have no idea.

SENATOR MCLANE: The answer is, you don't know?

SENATOR HEATH: I don't know. I am not an expert on aeronautics.

SENATOR MCLANE: Well, then why don't I ask it this way: would you assume that water aircraft or however we define a seaplane, would exercise due caution and respect for the rights and safety of any person using the public waters?

SENATOR HEATH: Yes, that is it, I remember. I presume that one has to practice that kind of landing, and that yes, people do come in and takeoff. Although I have never heard a complaint, and I have a lot of lake in my district, to say the least. But they do takeoff and land quite a bit, sometime. But that is a section of the legislation that I would presume they would anyway, because it is for their own safety.

SENATOR BASS: Senator Heath, are the operations of aircraft regulated by any other section of the New Hampshire law, and if so what?

SENATOR HEATH: I don't know, but I am certain that you would know as a flyer.

SENATOR BASS: Pilot. You are the flyer and I am the pilot.

SENATOR HEATH: You are referring to an airplane and I was referring to in here.

SENATOR BASS: Senator Heath, if I lived in the state of Ohio and I have fueled up, and I have pretty good range, and I had a seaplane, and I flew up to New Hampshire, how am I suppose to know that New Hampshire has any laws at all involving the operation of an aircraft, how am I suppose to know that I need to be in conformity with this law?

SENATOR HEATH: I guess the same way that you would know if you lived in Ohio and came here to trap beaver or hunt deer, you would check out the law before you engaged in the activity, I would presume.

SENATOR BASS: Do you need to get a license from the state of New Hampshire to fly a plane in the state as you do to trap beaver or to hunt?

SENATOR HEATH: Senator Bass, in this whole subject matter, I am flying by the seat of my pants. I haven't a clue as to aeronautic law in the state of New Hampshire or federally.

SENATOR BASS: Senator Heath, would you believe that it would be a good idea that this bill fly somewhere else other than the Governor's Office?

SENATOR HEATH: I would believe that you would believe that. I have no strong beliefs on the subject.

Committee amendment adopted.

Ordered to third reading.

**HB 1166**, an act changing the definition of "commercial boat" for the purposes of boat registration and granting a muffler exemption for antique and classic boats. Transportation committee. Ought to Pass with Amendment. Senator Heath for the committee.

5528L

#### **Amendment to HB 1166**

Amend the bill by replacing section 2 with the following:

2 Definition Changed. Amend RSA 72-A:1, I-a to read as follows:

I-a. "Commercial boat" means a vessel used [exclusively] **primarily** for commercial purposes which, in the case of vessels used for tidal and coastal waters, is verified by the port authority by means of a notarized document affirming that the vessel is so used. For the purposes of this paragraph "primarily for commercial purposes" means that the vessel is not used for more than 14 days of non-commercial use per registration year.

SENATOR HEATH: Yes, this bill allows more noisy boats on Newfound Lake. The old ones that make a lot of noise, they have a nice throaty roar, I love it. It also brings the definition of commerical boat into compliance with rules that have been written so that the commercial boats may be used for up to 14 days for family and private activities without losing their commercial status. The rule has always been there, we enacted the rule into law to fix that, but changed exclusive use to primary use to reflect the reality of the rule and what was a just situation. The other part allows antique boats not to comply with muffler and noise law.

SENATOR MCLANE: I am trying to be good, Roger, but I understand about an antique boat. An antique boat is anything before 1943. But almost every boat . . .

SENATOR HEATH: I guess I just made it under the wire, because that was the year that I was born.

SENATOR MCLANE: But a classic boat goes up to 1968. I can think of . . . I wonder if you have any idea of the number of classic boats that there are registered in this state?

SENATOR HEATH: A lot, but I don't know.

SENATOR MCLANE: You don't have any idea of the number?

SENATOR HEATH: You said 1968. I see a lot of pre-1968 boats out there, but I don't know how many there are besides that.

SENATOR MCLANE: Well, that is what I was thinking, too.

SENATOR HEATH: Some of them are pretty awful, they have plastic hoses and . . .

SENATOR MCLANE: I guess my question is, I can understand with an antique boat, but when you get into a definition of classic, I just wonder, (1) you don't know how many there are and is there any noise limit, is it a few decibels over what would be considered the 72 decibel level or is it any noise at all? Is there any limit?

SENATOR HEATH: The description sounds like it exempts. It says a muffler exemption for antique or classic boats.

SENATOR MCLANE: So that any noise on any boat that was built up to 1968 is allowed?

SENATOR HEATH: It refers to 270:25 and it says that the provision of this section shall not apply to antique boats or classic boats which have met decibel levels established by 270:37 and I guess 270:37 would be the level of decibels that would be allowed, but I cannot tell you from memory what that is. I am looking it up right now. "No person may operate any boat powered by a marine engine manufactured before January 1, 1977, in or upon the waters of this state which is capable of being operated in a manner which exceeds a noise level of 86 decibels on the "A" scale measured at a distance of 50 feet from the boat."

SENATOR MCLANE: Mr. President, could I table this bill until we discover how many boats we are talking about?

SENATOR HEATH: How would you discover that?

SENATOR MCLANE: Well, I would assume that you would go ask the Department how many boats do they have that are registered under 1968.

SENATOR DELAHUNTY (In the Chair): Senator McLane, the motion to table is not the proper motion at this time, because the motion is under discussion.

**LAID ON THE TABLE**

Senator Bass moved to have HB 1166 an act changing the definition of "commercial boat" for the purposes of boat registration and granting a muffler exemption for antique and classic boats laid on the table.

Adopted.

HB 1166 is laid on the table.

**HB 1256-FN-A**, an act requiring the department of transportation to study the United States Route 3 and New Hampshire Route 11 transportation corridor. Transportation committee. Ought to Pass with Amendment. Senator Pressly for the committee.

5536L

**Amendment to HB 1256-FN-A**

Amend the bill by replacing section 1 with the following:

1 United States Route 3 and New Hampshire Route 11 Study. The department of transportation shall participate in a \$250,000 cooperative, community-oriented planning study of the United States Route 3 and New Hampshire Route 11 transportation corridor serving the communities of Franklin, Tilton, Northfield, Sanbornton, Belmont and Laconia as authorized by 1989, 289:1. The costs of this study shall be paid from funds previously appropriated to the department of transportation. The study shall evaluate existing and anticipated land use and traffic flows, shall include citizen participation and inter-town consensus seeking and shall also involve other state and local agencies and businesses, resulting in a comprehensive transportation and planning study of the future needs of United States Route 3 and New Hampshire Route 11. The department of transportation shall provide staffing and overall direction and guidance emphasizing community participation and consensus building when developing proposed transportation improvements. The study shall include recommendations relative to improvement necessary to adequately address projected growth. The study shall also include United States Route 3 and New Hampshire Route 11 traffic models to better analyze traffic flow with different land use development and alternate roadway improvements, and conceptual improvement plans and identification of alternatives to ultimate reconstruction. The study shall also consider the needs and impact upon the towns of Meredith and Gilford, public transportation services and commuter parking lots. The report shall be submitted to the speaker of the house, senate president and governor on or before November 1, 1993.

SENATOR PRESSLY: I would just like to point out that there is a slight error in the fiscal impact. There will be no increased state expenditure. This is funds that have already been appropriated and there is federal match to it. The project was left off of the ten year plan. The amendment, I would like to draw particular attention to. It was requested by the selectmen in the town that this artery will pass through, that the Lakes Region Planning Commission be specifically removed from the bill. It was sort of understood that that would be okay to do, and the Senate is proposing that. However, I think that it is important to have placed into the record, that the Senate is extremely supportive of the Lakes Region Planning Commission, we respect what they do, and we expect them as the department indicated, that they will in fact, be a very active player in this project. So although the language is to be removed, it is clearly understood that the Department of Transportation will be working very closely with the Lakes Region Commission in the planning of this project. The improvements will come between Franklin and Laconia. Everyone there seemed supportive. The project is approximately 11 miles long. With the amendment, we recommend final passage.

SENATOR W. KING: Could you explain why you are removing the Lakes Region Planning Commission?

SENATOR PRESSLY: It turns out that the town of Tilton, which is a major part of the 11 year plan, is not technically a member of the Lakes Region Planning Commission, although they are eligible to be and they do benefit from . . .

SENATOR HEATH: I was just going to say that I can expand on that. They are already on the study. They have already agreed that they would be a resource. Traditionally, we have not enacted them in a contractual basis, they are a resource that is already out there, so they are going to be involved, but as the town of Tilton is not a member of the group and has not payed its dues, and as we have not traditionally recognized planning commissions as part of the planning process, except on committees that are on the committee.

SENATOR PRESSLY: I would like to complete the sentence that I would like entered into the record, and that is that the Senate committee fully understands that the lakes region planning commission will be part of the study and will be as appropriately so, very much involved in the total highway planning for the area. I wanted that to be completed so that all parties concerned also know that is in the Senate record, and that is the intent.

Committee amendment adopted.

Ordered to third reading.

Recess.

President Dupont in the Chair.

**HB 1261-FN-A**, an act requiring the department of transportation to conduct a study relative to the construction of certain portions of U.S. Route 3. Transportation committee. Ought to Pass. Senator Cohen for the committee.

SENATOR COHEN: This is a simple bill. The funds have previously been appropriated for the study to be conducted by the Department of Transportation. Portions of route #3 in question, were built without a plan. The road fans out and sinks somewhat, arbitrarily speeds vary between 65 and 35. Traffic is between 40 - 50,000 vehicles per day and there is great concern about safety. The traffic has increased because of people avoiding tolls, and it needs to be safe for the business and the residential communities. The committee urges a vote of ought to pass.

Adopted.

Ordered to third reading.

**HB 1286-FN-L**, an act allowing antique motor vehicles other than antique motorcycles to be registered at a prorated rate. Transportation committee. Ought to Pass. Senator Pressly for the committee.

SENATOR PRESSLY: This primarily just changes the words 'antique motor car' to 'vehicle'. It includes the word vehicle, the intent being that there are very nice trucks that would now qualify for this status, and it was the request that this be done and it seemed like a reasonable request. The motion is ought to pass.

SENATOR W. KING: Senator Pressly, I have to admit ignorance of this subject, but why is it that we prorate these things in the first place? Did you learn that in the discussion?

SENATOR PRESSLY: Dare I admit lack of knowledge. I would welcome any other member if they would choose to respond. Just to say that it was a busy day and we think that it is okay the way that it is.

Adopted.

Ordered to third reading.

Senator W. King in opposition to HB 1286-FN-L.

**HB 1455-FN**, an act relative to motor vehicle laws, including suspension of wholesale motor vehicle dealer's registration, hanging disabil-

ity placards, and other technical changes. Transportation committee. Ought to Pass with Amendment. Senator Heath for the committee.

5493L

**Amendment to HB 1455-FN**

Amend the bill by inserting after section 12 the following and re-numbering the original sections 13 and 14 to read as 14 and 15, respectively:

13 Motor Vehicle Warranties; Motorcycles Added. Amend RSA 357-D:5, V to read as follows:

V. If, after a reasonable number of attempts, the manufacturer, its agent or authorized dealer or its delegate is unable to conform the motor vehicle to any express warranty by repairing or correcting any defect or condition covered by the warranty which substantially impairs the use, market value, or safety of the motor vehicle to the consumer, the manufacturer shall, at the option of the consumer within 30 days of the effective date of the board's order, replace the motor vehicle with a new motor vehicle from the same manufacturer, if available, of comparable worth to the same make and model with all options and accessories with appropriate adjustments being allowed for any model year differences or shall accept return of the vehicle from the consumer and refund to the consumer the full purchase price or to the lessee, in the case of leased vehicles, as provided in paragraph IX. In those instances in which a refund is tendered, the manufacturer shall refund to the consumer the full purchase price as indicated in the purchase contract and all credits and allowances for any trade-in or down payment, license fees, finance charges, credit charges, registration fees, and any similar charges and incidental and consequential damages or, in the case of leased vehicles, as provided in paragraph IX. Refunds shall be made to the consumer and lienholder, if any, as their interests may appear, or to the motor vehicle lessor and lessee as provided in paragraph IX. A reasonable allowance for use shall be that amount directly attributable to use by the consumer prior to the first repair attempt and shall be calculated by multiplying the full purchase price of the vehicle by a fraction having as its denominator 100,000 **or for a motorcycle 20,000** and having as its numerator the number of miles that the vehicle traveled prior to the first attempt at repairing the vehicle.

SENATOR HEATH: Yes, this is a bill that is a bit of a Christmas tree. The language in it got screwed up and there is some controversy about another section, and so I would defer to Senator Currier.



SENATOR CURRIER: I move that this bill be recommitted to the Transportation committee. There are two amendments that basically got merged into one and there are a couple of technical points that need to be addressed.

### MOTION TO RECOMMIT

Senator Currier moved to recommit HB 1455-FN an act relative to motor vehicle laws, including suspension of wholesale motor vehicle dealer's registration, hanging disability placards, and other technical changes to the Transportation committee.

HB 1455 is recommitted.

**HB 1130**, an act relative to ejecting persons from racetracks whose presence is inconsistent with proper conduct of a race meet and relative to unclaimed Pari-Mutuel pool tickets. Ways and Means committee. Ought to Pass. Senator Hollingworth for the committee.

SENATOR HOLLINGWORTH: The committee on Judiciary would like to ask for your support of ought to pass on HB 1130. This bill does two things; it allows at the request of the Attorney General's Office and the Pari-Mutuel Commission that the word 'presence' be added to the conduct of those people who could be ejected from a racetrack. It also determines what a racetrack is, whether it is live or simulcast racing. It does one other thing; it also allows that the pari-mutuel tickets that remain unclaimed after 11 months, shall not be paid. We passed this law last year, which allowed that the legislative bills for the unclaimed tickets, that they would go back to the general fund immediately and not be held in the state treasurer's fund. That resulted in \$1,200,000 going back into the general fund immediately. What will happen is that the ticket will be held at the track for one month and then it will be held in the general fund to be paid for 11 months, and after that time they will not be paid. We hope that you will support this.

Adopted.

Referred to finance (Rule #24).

**HB 1345**, an act allowing off-sale beer and wine licensees to advertise by signs and posters. Ways and Means committee. Ought to Pass with Amendment. Senator Hollingworth for the committee.

5579L

**Amendment to HB 1345**

Amend the title of the bill by replacing it with the following:

**AN ACT**

allowing off-sale licensees to advertise by signs and posters.

Amend the bill by replacing all after the enacting clause with the following:

1 Advertising by Signs Permitted. Amend RSA 179:25, I to read as follows:

I. An off-sale licensee may display on the outside of the premises 2 non-internally illuminated signs reading BEER AND ALE, BEER IN BOTTLES, BEER, or any combination approved by the commission and may display on the outside of the premises 2 non-internally illuminated signs reading WINE, WINE IN BOTTLES, WINES or any combination or size approved by the commission. **An off-sale licensee may display other non-internally illuminated types of signs and posters advertising beer and wine on the outside or from the inside of the premises, in accordance with rules adopted by the commission under RSA 541-A, relative to size, illumination, location and any other criteria the commission deems necessary.**

2 Permitting Window Advertising by Off-Sale Licensees. Amend RSA 179:31, XIII and XIV to read as follows:

XIII. No holder of an on-sale [or off-sale] license shall advertise beverages or liquor by the use of cards in windows, except the posting of a printed menu **or wine list.**

XIV. No holder of an on-sale [or off-sale] license shall allow advertising material or display to be located near windows so as to constitute a window display or advertising, except the posting of a printed menu. Table tents may be utilized in licensed premises.

3 Effective Date. This act shall take effect 60 days after its passage.

**AMENDED ANALYSIS**

This bill allows off-sale licensees to advertise by signs and posters, in accordance with rules adopted by the liquor commission.

SENATOR HOLLINGWORTH: The committee on Ways and Means would like to ask that this bill be ought to pass with amendment. What this bill does, is allow for advertising. Last year when we passed the bill to reduce the sales tax on beer, we thought that we would see great returns coming back into the state from the sale of beer. But, unfortunately, it remained the best kept secret

around, that we had a lower beer tax than Massachusetts and our surrounding neighbors. It was discovered that we thought that we had addressed the problem by allowing for advertising in the newspaper and radio, but what we had not allowed for was the display in the off-sale license holder of the cost of our varied reasonable beer. So this bill would allow for that in-the-window display, it would give the commission the ability to determine the size of those signs and the illumination of those signs. It also allows for on sale restaurants to show in their windows, the cost of their alcohol and beverages and wine.

Committee amendment adopted.

### LAID ON THE TABLE

Senator W. King moved to have HB 1345 an act allowing off-sale beer and wine licensees to advertise by signs and posters laid on the table.

Adopted.

**HB 1186-FN**, an act authorizing the department of fish and game to purchase the Morrill Pond dam and abutting property in the town of Canterbury. Wildlife and Recreation committee. Ought to Pass with Amendment. Senator Heath for the committee.

**5567L**

### Amendment to HB 1186-FN

Amend the title of the bill by replacing it with the following:

#### AN ACT

assigning certain dams to the department of fish and game  
transferring funds to the dam maintenance fund and  
authorizing the department of fish and game to  
purchase the Morrill Pond dam and abutting  
property in the town of Canterbury.

Amend the bill by inserting after section 1 the following and re-numbering the original section 2 to read as 4.

2 Authority to Accept Dams Transferred. Amend the introductory paragraph of RSA 482:48, III(a) to read as follows:

III.(a) Governor and council approval having been granted, legislative approval is hereby given to the land conservation investment program to accept the following dams and assign to the department of [resources and economic development] **fish and game** for management purposes, including but not limited to operation and minor maintenance of said structures, as follows:

3 Land Conservation and Investment Program; Transfer to Dam Maintenance Fund. RSA 482:48, III(c) is repealed and reenacted to read as follows:

(c) The land conservation investment program shall transfer \$60,000 to the dam maintenance fund under RSA 482:55 to offset future repairs for the dams listed in subparagraph (a).

### AMENDED ANALYSIS

This bill authorizes the department of fish and game to purchase Morrill Pond dam and abutting property in the town of Canterbury.

This bill transfers jurisdiction of certain dams from the department of resources and economic development to the department of fish and game.

The bill also transfers funds from the land conservation investment program to the dam maintenance fund.

SENATOR HEATH: This bill had no opposition and it was probably the shortest hearing that we have had. They need permissive language to acquire this dam. It was unanimous from all points of view.

SENATOR PRESSLY: This is 1186?

SENATOR HEATH: You mean you don't know the bill that we are on and you have a question for me?

SENATOR PRESSLY: No. I know which one we are on. I was just making sure. I do have a question for you.

SENATOR HEATH: Oh good. Go for it.

SENATOR PRESSLY: Would you repeat that last sentence, please?

SENATOR HEATH: What, go for it?

SENATOR PRESSLY: No.

SENATOR DUPONT: Senator Pressly, do you have another question?

SENATOR PRESSLY: No, it has been handled, thank you.

Adopted.

Ordered to third reading.

### TAKEN OFF THE TABLE

Senator McLane moved to have HB 1166 an act changing the definition of "commercial boat" for the purposes of boat registration and granting a muffler exemption for antique and classic boats taken off the table.

Adopted.

**HB 1166**, an act changing the definition of "commercial boat" for the purposes of boat registration and granting a muffler exemption for antique and classic boats. Transportation committee.

**5528L**

### **Amendment to HB 1166**

Amend the bill by replacing section 2 with the following:

2 Definition Changed. Amend RSA 72-A:1, I-a to read as follows:

I-a. "Commercial boat" means a vessel used [exclusively] **primarily** for commercial purposes which, in the case of vessels used for tidal and coastal waters, is verified by the port authority by means of a notarized document affirming that the vessel is so used. For the purposes of this paragraph "primarily for commercial purposes" means that the vessel is not used for more than 14 days of non-commercial use per registration year.

**SENATOR MCLANE:** Mr. President, we just had a discussion on HB 1166 and the question was on the muffler exemption for antique and classic boats. I have since been informed what I should have been able to read myself, that the antique or classic boat must meet the 82 decibel level. What we are exempting them from is the law that says, that the muffler has to go down so many inches into the water. I would understand that that would be a difficult thing to do on an old boat, and if they meet the decibel level, all my objections are removed. So I would ask that we go along with the committee report.

Committee amendment adopted.

Ordered to third reading.

### **TAKEN OFF THE TABLE**

Senator Humphrey moved to have SB 309 an act prohibiting the distribution of condoms to persons 21 years of age or younger on state property or in schools taken off the table.

**SENATOR RUSSMAN:** Mr. President, I have a parliamentary inquiry. Mr. President, if we remove this bill or any of these bills from the table, what is going to happen to them in terms of the process as far as becoming law?

**SENATOR DUPONT:** Senator, the House and the Senate are in a position right now, where they are not accepting bills from each others body. We have passed the agreed upon deadlines that we have established for cross-over. So as has been indicated, you can pass everything left on the table, and quite frankly, I do not believe that the House will accept the bills for introduction, so they will not go over to the other body.

SENATOR HUMPHREY: Where are we, Mr. President?

SENATOR DUPONT: There was a parliamentary inquiry, relative to what is happening with the process on bills that are still on the table and I answered that question. Your motion is to take SB 309 from the table.

SENATOR MCLANE: Parliamentary inquiry. Given your discussion of whether the other body would accept this bill, Mr. President, I was wondering if I felt that the only reason that a person was demanding that a bill come off of the table, was so that they could get a roll call vote, would I then vote no on the motion to take it from the table?

SENATOR DUPONT: Senator, the choice before you is relative to whether to remove SB 309 from the table. As I indicated, it has been made clear to us and we have made clear to the leadership of the House, that new bills will not be allowed in or bills that have not made it through the process to this point.

SENATOR HEATH: Isn't it true, however, that we have not adopted joint rules, and that then is the attitude, not a rule, the attitude of the leadership of the House, and perhaps the Senate in the corresponding aspect, and that a majority of either body could overrule that decision if they choose too?

SENATOR DUPONT: Senator, the House has adopted rules, relative to cross-over days. So in fact, there are rules in place that they are operating under that dictate when they would accept Senate Bills. That is the point that I needed to make. It would take a 2/3 vote of the body. If it is because of a specific problem that has come up that was not able to be addressed during the process, then we could suspend the rules to do that. That would require a 2/3 vote of the body.

SENATOR HEATH: Do we have rules adopted that are there or are we corresponding to theirs in terms of allowing a House bill to come in?

SENATOR DUPONT: Senator, we do not specifically have rules that we adopted. As a rules committee, recommended guidelines for how the Senate should work its ways through its bills that were before it so that our work could be done in an orderly fashion.

SENATOR HEATH: So they are guidelines, not rules?

SENATOR DUPONT: That is correct.

SENATOR HEATH: Thank you.

SENATOR HUMPHREY: Mr. President, I would ask for a roll call vote on this motion.

SENATOR PODLES: Mr. President, I would like to know the status of SB 406, which was sent to the Supreme Court for a ruling? If what you are saying, does that apply to SB 406, that the other body will not act on SB 406?

SENATOR DUPONT: Senator, when we send questions to the court for a recommendation, we have an agreement with the House, they have a couple of things over there and if it comes in after the deadline, I again emphasize the fact, that specific exceptions to that rule are made when there is something that dictates that there is urgency or a specific process reason why the legislation has not gotten over to them on time. They are aware, I made them aware when we sent the issue over there, that it would be coming in late and as a courtesy, they will allow it in.

SENATOR PRESSLY: If I believe that the topic of SB 309 really does rest with local communities and that it is really no business of the Senate to even be discussing this, would I not vote no on this issue?

SENATOR DUPONT: Senator, the question before you is to allow SB 309 to be removed from the table.

SENATOR HEATH: Parliamentary inquiry, relative to the questions that were sent to the courts. The questions have been sent to the court?

SENATOR DUPONT: Senator, in order for us to send a question to court, we have to lay the bill on the table and adopt the resolution, specifically, asking the question of the court.

SENATOR HEATH: Have we adopted the resolution with the question?

SENATOR DUPONT: Yes, we have.

SENATOR HEATH: Okay, thank you.

Recess.

Out of recess.

Question is on taking SB 309 off of the table.

A roll call was requested by Senator Humphrey.

Seconded by Senator Heath.

The following Senators voted Yes: Heath, Disnard, Roberge, Colantuono, Podles, Humphrey, J. King, Delahunty.

The following Senators voted No: Oleson, W. King, Hough, Currier, Bass, Pressly, Nelson, McLane, Russman, Shaheen, Hollingworth, Cohen.

Yeas 8

Nays 12

Motion fails.

### **REPORT OF COMMITTEE ON ENROLLED BILLS**

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House Bill:

**HB 1499**, relative to inter-track wagering and the conduct of simul-cast racing.

### **RESOLUTION**

Senator Delahunty moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that the bills ordered to third reading be read a third time by this resolution, all titles be the same as adopted and that they be passed at the present time, and that when we adjourn, we adjourned until Thursday, April 2, 1992 at 1:00 p.m.

Adopted.

Senator Currier moved that the business of the day being completed, the senate now adjourn until April 2, 1992 at 1:00 p.m.

Adopted.

### **LATE SESSION**

#### **Third Reading and Final Passage**

**HB 285-A**, an act relative to constructing regional vocational centers and making an appropriation therefor.

**HB 326-FN**, an act relative to disciplinary hearings before the pharmacy board.

**HB 446-FN**, an act relative to the board of registration in medicine and relative to the definition of psychologist.

**HB 503**, an act relative to recovery of medical assistance payments.

**HB 545**, an act reapportioning the executive council districts.

**HB 562**, an act extending the surgical authority of podiatrists.

**HB 569**, an act to reapportion county commissioner districts.

**HB 714-FN**, an act relative to a life saver I.D. program.

**HB 1107-L**, an act requiring that tax collectors provide property owners with notices of arrearages for property taxes.



**HB 1119**, an act relative to the New Hampshire automated information system board.

**HB 1144**, an act relative to the examination of school bus operators.

**HB 1152**, an act authorizing the office of child support enforcement services, a dependent child or his parent or guardian to receive directly from a health insurer a certificate of insurance covering any dependent child.

**HB 1164**, an act relative to seaplanes operating on bodies of water in New Hampshire.

**HB 1166**, an act changing the definition of "commercial boat" for the purposes of boat registration and granting a muffler exemption for antique and classic boats.

**HB 1186-FN**, assigning certain dams to the department of fish and game transferring funds to the dam maintenance fund and authorizing the department of fish and game to purchase the Morrill Pond dam and abutting property in the town of Canterbury.

**HB 1207**, an act exempting hospice houses from certificate of need review.

**HB 1228-FN**, allowing a city, town or village district to grant waivers from the requirement of connection to the public sewer systems for properties with adequate alternative sewage disposal systems.

**HB 1256-FN-A**, an act requiring the department of transportation to study the United States Route 3 and New Hampshire Route 11 transportation corridor.

**HB 1261-FN-A**, an act requiring the department of transportation to conduct a study relative to the construction of certain portions of U.S. Route 3.

**HB 1286-FN-L**, an act allowing antique motor vehicles other than antique motorcycles to be registered at a prorated rate.

**HB 1315-L**, an act amending RSA 154 relative to firewards and fire-fighters, exempting fire investigators from having law enforcement backgrounds, extending the committee studying fire laws, and extending the state historic flag committee and making an appropriation to such committee.

**HB 1318-FN**, an act repealing a provision of the business corporations act concerning application for reinstatement of charters and relative to the annual reports of beverage vendors and beverage vendor importers.

**HB 1341-FN-L**, an act clarifying the terms “subsequent tax” and “registered” and “certified” mail for purposes of certain property tax laws.

**HB 1351**, an act creating a committee to review the laws governing tax-exempt property and to study the concept of and criteria for payment in lieu of taxes by tax-exempt properties in response to HBI 2 of the 1991 session.

**HCR 26**, an act urging the New Hampshire legislature and the New Hampshire Congressional delegation to discourage certain Air Force testing of F-16 fighter aircraft in New Hampshire airspace.

Senator Currier moved to adjourn.

Adopted.

Adjournment.

*April 2, 1992*

The Senate met at 1:00 p.m.

A quorum was present.

The prayer was offered by the Rev. David P. Jones, Senate Guest Chaplain.

Plato said, “the penalty that good people pay for not being interested in politics is to be governed by people worse than themselves.”

You are good people. Thank you for being interested in politics. I know it costs you something.

Thomas Jefferson said, “Whenever a person has cast a longing eye on offices, a rottenness begins in his conduct.”

For all of our sakes, please be careful.

Let me pray with you:

*O Lord our God, neither the Union Leader on the right hand nor the Concord Monitor on the left hand have given your servant guidance this day on how to pray for these your children, and perhaps that is the best news they will have had today. So be close to each member of this Senate, I pray, and preserve them from anyone telling them what to do - except for you.*

*Amen*

Senator Delahunty led the Pledge of Allegiance.

### INTRODUCTION OF GUESTS

Senators Cohen and Fraser were excused for the day.







